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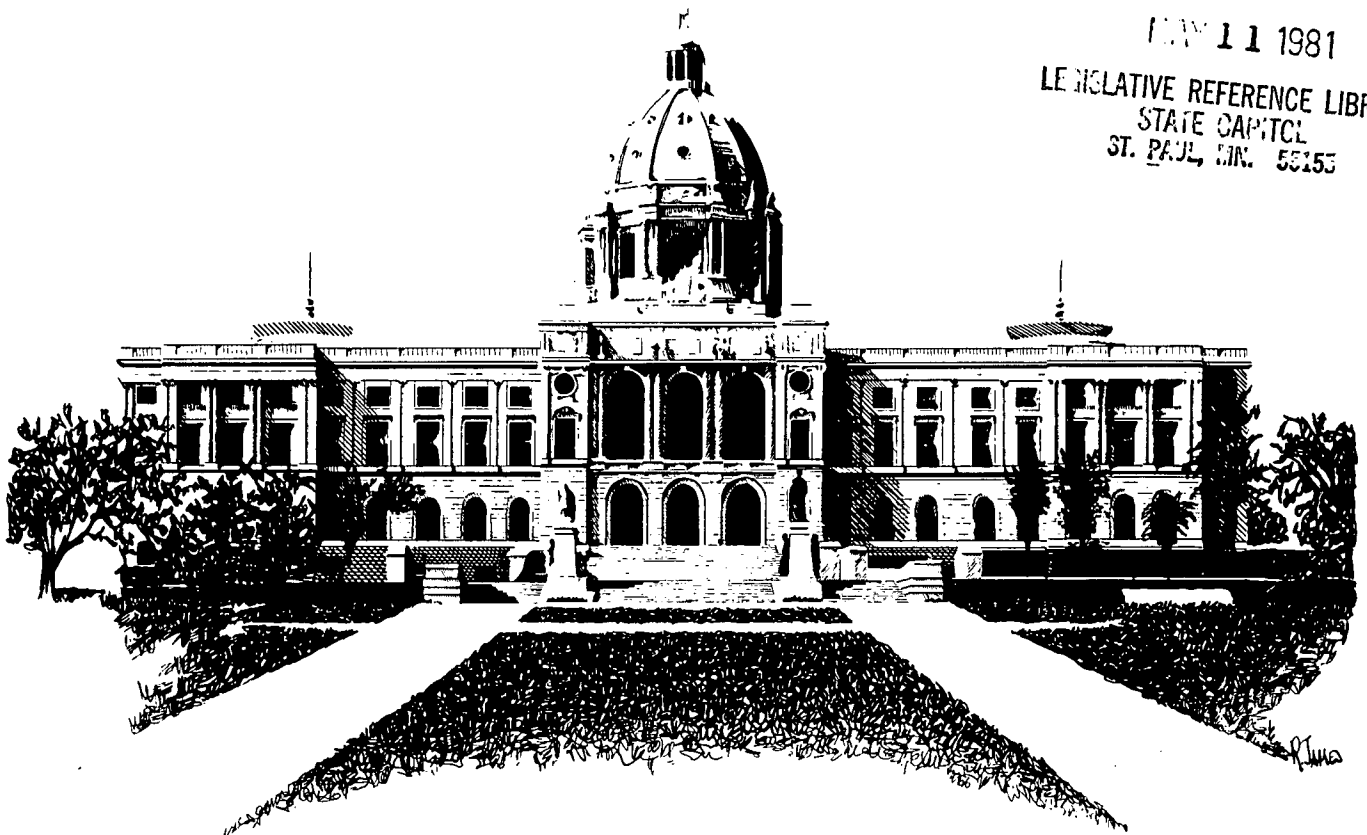
STATE REGISTER

STATE OF MINNESOTA

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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 5			
46	Monday May 4	Monday May 11	Monday May 18
47	Monday May 11	Monday May 18	Monday May 25
48	Monday May 18	Friday May 22	Monday June 1
49	Friday May 22	Monday June 1	Monday June 8

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION**. Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The **PROPOSED RULES** section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The **ADOPTED RULES** section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All **ADOPTED RULES** and **ADOPTED AMENDMENTS TO EXISTING RULES** published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted **TEMPORARY RULES** appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the **MCAR AMENDMENTS AND ADDITIONS** list on the following schedule:

Issues 1-13, inclusive

Issues 14-25, inclusive

Issue 26, cumulative for 1-26

Issue 27-38, inclusive

Issue 39, cumulative for 1-39

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Issue 52, cumulative for 1-52

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
 2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
 3. of the manner in which persons shall request a hearing on the proposed rules;
- and
4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Corrections

Proposed Rules Governing Adult Detention Facilities

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, Subd. 4 (1980) in the State Office Building, Room 81, St. Paul, Minnesota, 55155, on June 18, 1981, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have the opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written material may be submitted by mail to Richard Luis, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, telephone (612) 296-8114. Unless a longer period, not to exceed twenty calendar days, is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to changes as a result of the rules hearing process. The agency, therefore, strongly urges those who may be affected in any manner by the substance of the proposed rules to be considered in this hearing to participate in the rules hearing process. In addition it is suggested, to save time and avoid duplication, that those persons, organizations or associations having common viewpoints or interests in these proceedings join together where possible and present a single statement on behalf of such interests. All such statements will be entered with and become a part of the record.

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. All questions and statements about procedure may be directed to the Office of Administrative Hearings. All questions related to the content of the rules may be directed to John McLagan, Director of Standards Development, Minnesota Department of Corrections, 430 Metro Square Building, St. Paul, Minnesota, 55101, telephone 612/296-6041. One free copy of the rules will also be available upon request from John McLagan.

Minn. Stat. § 241.021 (1976), as amended by Laws of 1978, ch. 778, effective September 1, 1979, provides that the Commissioner of Corrections shall promulgate rules establishing minimum standards for all correctional facilities throughout the state whether public or private, established and operated for the detention and confinement of persons detained or confined therein according to the law except to the extent that they are inspected or licensed by other State regulating agencies. The rules which follow are intended to fulfill that requirement for holding facilities, lockups, jails and adult corrections facilities in the State of Minnesota. The purpose of these standards is to facilitate the implementation of rules in accordance with Minn. Stat. § 241.021, and to provide a framework for inspection and licensing of such facilities.

The proposed rules, if adopted, would replace Department of Corrections rules 11 MCAR §§ 2.100-2.112, which are available upon request at the Department of Corrections. The proposed rules are minimum standards for the operation of adult detention

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

facilities in the State of Minnesota and include: (1) an introduction; (2) definition of terms; (3) intended use and non-conformance with rules; (4) variances; (5) personnel standards; (6) staff training; (7) staff development, job descriptions, work assignments, post orders, policies and procedures; (8) records and reports; (9) prisoner welfare; (10) food service; (11) security; and (12) environmental-personal health and sanitation.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 1014.01, sub. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five (5) hours in any month or more than \$250, not including his/her own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including his/her own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notifications by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

April 24, 1981

Jack G. Young
Commissioner of Corrections

Rules as Proposed (all new material)

11 MCAR § 2.171 Introduction. Section 1, Minn. Stat. § 241.021, subd. 1 (1974) as amended by Laws of 1976, ch. 299, to be effective July 1, 1976, provides that the Commissioner of Corrections promulgate rules establishing minimum standards for all correctional facilities throughout the state whether public or private, established and operated for the detention and confinement of persons detained or confined therein according to law except to the extent that they are inspected or licensed by other state regulating agencies. The rules which follow are minimum standards for holding facilities, lockups, jails and adult corrections facilities in the State of Minnesota. Facilities which house males and females shall provide comparable care for each group. Facilities housing juveniles must meet the special criteria established for that group. All inspections made by the department shall be according to the standard in this rule and shall compare the care level for male and female groups.

11 MCAR § 2.172 Definitions. For the purpose of these rules:

A. "Administrative segregation" shall mean the physical separation of prisoners prone to escape, prone to assault staff or other prisoners, or likely to need protection from other prisoners or themselves, or prisoners determined to be mentally deficient who are in need of special care.

B. "Adult corrections facility" shall mean a secure detention facility use to confine prisoners for periods of time not to exceed one (1) full year per conviction.

C. "Approved capacity" shall mean the maximum number of prisoners which any cell, room, unit, building, facility or combination thereof is approved for in compliance with the standards.

D. "Average daily population" shall mean the average number of prisoners residing daily during the last calendar year. Prisoners on furlough or hospitalized are excluded.

E. "Commissioner" shall mean Commissioner of the Minnesota Department of Corrections.

F. "Controlled substance" shall mean a drug, substance or immediate precursor in Schedules I through V of Minn. Stat. § 152.02. The term shall not include distilled spirits, wine, malt beverages, intoxicating liquor or tobacco.

- G. "Custody personnel" shall mean those staff whose primary duties are the day-to-day or ongoing supervision of prisoners.
- H. "Department of Corrections" or "department" shall mean Minnesota Department of Corrections.
- I. "Disciplinary segregation" shall mean that status assigned a prisoner following a hearing in which the prisoner was found guilty of violating a facility rule or state or federal law. The status results in separating the prisoner from the general population.
- J. "Emergency" shall mean any significant incident or disruption of normal facility procedures, policies, routines or activities.
- K. "Existing facility" shall mean any facility used for detention and confinement of prisoners prior to May 15, 1978.
- L. "Facility administrator" shall mean the individual who has been delegated the responsibility and authority for the administration and operation of a local facility.
- M. "Holding cell" shall mean a cell or room used to hold one (1) or more persons temporarily while awaiting release, booking, court appearance, transportation, or interrogation.
- N. "Holding facility" shall mean a secure adult detention facility used to confine prisoners prior to appearance in court not to exceed seventy-two (72) hours excluding holidays or weekends.
- O. "Inspection" shall mean an on-site assessment of existing conditions and their relationship to meeting standards.
- P. "Jail" shall mean a secure adult detention facility used to confine sentenced prisoners not to exceed one (1) full year per conviction, adult pretrial and presentenced detainees indefinitely and juveniles up to limits prescribed by Minnesota Statute and commissioner approval.
- Q. "Legend drug" shall mean a drug which is required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without prescription."
- R. "Local facility" shall mean any city, county, city and county, or multiple county corrections facility.
- S. "Lockup facility" shall mean a secure adult detention facility used to confine prisoners prior to appearance in court and sentenced prisoners not to exceed ninety (90) days. In addition to the cell, a lockup facility shall include:
1. Space for moderate exercise and activity, such as weight lifting, ping pong, table games, reading, T.V., and cards.
 2. Policy and procedures which assure each prisoner a minimum of four (4) hours per day of leisure time activity out of their cell. If a prisoner does not participate in out-of-cell leisure time activity due to illness, discipline or choice, this shall be recorded in the log.
 3. Policy and procedures which permit access to and encourage helping agencies such as educational services, chemical dependency counselors, employment services, clergy, legal services and educational services shall be provided to prisoners.
- T. "Mandatory" shall mean the rule shall either be met by the facility or waived by the commissioner in order to be licensed.
- U. "Maximum security areas" shall mean areas that provide the greatest degree of physical security for the control and separation of prisoners.
- V. "Medicine" shall mean any remedial agent that has the property of curing, preventing, treating or mitigating diseases, or that is used for that purpose. For the purpose of these rules, medicine shall include legend and non-legend drugs.
- W. "Minimum security areas" shall mean areas that provide functional living accommodations with a nominal reliance on physical security for the control and management of prisoners.
- X. "Policy" shall mean a statement declaring mission, purpose, and ideological position.
- Y. "Prisoner" shall mean any individual, adult or juvenile, detained or confined in a local facility.
- Z. "Procedure" shall mean a written statement establishing the action plan to implement policy.
- AA. "Rule" shall mean that which is defined by Minn. Stat. § 15.0411, subd. 3.
- BB. "Substantially conform" shall mean a compliance rating of 100% on items labeled mandatory and a rating of 70% compliance on all other items in these rules.
- CC. "Variance" shall mean the waiver of a specific rule for a specified period of time.

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PROPOSED RULES

11 MCAR § 2.173 Intended use and non-conformance with rules.

- A. Intended use. A facility shall be used only for classifications for which it is in compliance.
- B. Nonconformance, unsafe, unsanitary or illegal conditions. When conditions do not substantially conform to the rules stated herein or where specific conditions endanger the health, welfare or safety of prisoners and/or staff, the facility's use shall be restricted pursuant to Minn. Stat. § 241.021 (subd. 1) or legal proceedings to condemn the facility will be initiated pursuant to Minn. Stat. § 641.26 Condemnation of Jails, or Minn. Stat. § 642.10 Condemnation of Lockup.
- C. Severability. If any article, section, subsection, sentence, clause or phrase of these rules is for any reason held to be unconstitutional, contrary to statute, exceeding the authority of the Department of Corrections, or otherwise inoperative, this shall not affect the validity of the remaining portion of these rules.

11 MCAR § 2.174 Variances.

A. Variances. A local facility may request in writing a variance of a specific rule. Variance requests shall be submitted to the Commissioner of Corrections, who, within thirty (30) days shall provide his findings in writing.

1. The request for a variance shall cite the rule in question, reason for requesting the variance, the period of time the governing body wishes to have the rule waived, and the equivalent measures planned for protecting the health and safety of prisoners and staff.
2. The request shall state the justification for the requested exception and document the claim that the exception meets the intent of the rule and will not jeopardize the supervision of prisoners, established programs, security or the safe, healthful or efficient operation of the facility.

B. Emergency suspensions of rules. Nothing contained herein shall be construed to deny the power of the facility administrator to temporarily suspend any rule in the event of an emergency.

1. Only rules directly affected by the emergency shall be suspended.
2. The facility administrator shall notify the Department of Corrections in writing within seventy-two (72) hours of a suspension of any rule. No suspension shall exceed seven (7) days without the approval of the Commissioner of Corrections. Work and educational release sentences shall be exempt from the ninety (90) days confinement limitation in lockups and seventy-two (72) hour confinement limitation in holding facilities if there is separate housing for this group.

11 MCAR § 2.175 Personnel standards.

A. Staff health. All personnel shall be screened for tuberculosis prior to employment. Such tests shall be of either the tuberculin skin test or the chest roentgenogram (X-ray). If a skin test is positive, a chest roentgenogram (X-ray) shall be required. Additional testing shall be required upon known exposure to tuberculosis.

B. Recruitment.

1. The selection, appointment and promotion of facility personnel shall be based on assessed ability.
2. There shall be no discrimination on the grounds of race, color, religion, sex or national origin. (Mandatory)
3. Custody personnel shall be a minimum of eighteen (18) years of age.
4. Recruitment standards shall set forth the basic requirements as to age, ability, preparatory experience, physical condition and character. They shall also set forth those qualities which may disqualify.

C. Employee evaluation. Each employee shall complete a probationary period and be evaluated during the probationary period before being permanently appointed. The evaluation shall be in writing, discussed with the employee and made a part of the employee's personnel record.

D. Extra duty. No employee shall be scheduled for duty for two (2) consecutive work periods except where unusual circumstances require reasonable and prudent exception.

E. Staffing requirements.

1. The facility administrator shall prepare and retain a staffing plan indicating the personnel assigned to the facility and their duties.
2. There shall be a single administrator or chief executive of each facility. Where the average daily population of prisoners exceeds fifty (50), administrative assistance shall be required.
3. In the absence of the facility administrator, a staff person shall be designated in charge. (Mandatory)
4. No person shall be detained without a staff person on duty, present in the facility, awake and alert at all times, and capable of responding to the reasonable needs of the prisoner. (Mandatory)

5. Staff members shall not be placed in positions of responsibility for the supervision and welfare of prisoners of the opposite sex in circumstances that can be described as invasion of privacy, degrading or humiliating to the prisoners. When staff of one sex are used as program resource with prisoners of the opposite sex, staff of the prisoners' sex must be on duty, and in the facility. (Mandatory)

6. Maintenance personnel shall be employed to perform preventive, routine and emergency maintenance functions. Custody staff shall not be given physical plant maintenance duties which detract from their primary responsibilities for ongoing supervision of prisoners.

7. In facilities which use the dispatcher/custody position as sole supervision, the dispatcher/custody staff person must be assisted on duty by another custody staff person when the jail population exceeds fifteen (15). This requirement applies only during shifts when prisoners are not in lockup status. (Mandatory)

8. The ratio of custody staff shall not be less than one (1) staff person to twenty-five (25) prisoners any time prisoners are not secured in cells, detention rooms or dormitories. A combination of staff resources and physical plant resources shall provide the capability of reporting incidents and responding to emergencies. (Mandatory)

9. Program staff requirements are as follows:

a. Holding facility. No on-site program staff required.

b. Lockups. A staff person shall be designated to coordinate community services and volunteer programming.

c. Jails. A staff person shall be designated to coordinate educational/vocational programs, social services programs, work release and volunteer services programs. The following minimum staff/prisoner ratio shall apply for average daily population:

(1) Under 25: part-time assignment of one (1) staff;

(2) 25-50: one (1) staff full-time or staff equivalent including volunteer;

(3) 51-100; two (2) staff full-time or staff equivalent including volunteer;

(4) Over 100: three (3) or more full-time staff or equivalent.

d. Facilities approved for eight (8) day detention of juveniles shall designate a staff person to coordinate community services and volunteers utilized by the facility. The staff person need not be full time in this position. (Mandatory for eight (8) day detention of juveniles.)

e. Jails with average daily populations of fifty (50) or more shall have the equivalent of one (1) full-time recreation coordinator.

f. Adult corrections facilities.

(1) Adult corrections facilities shall have a minimum of one (1) full-time program coordinator.

(2) A written program shall be developed to include educational/vocational services, recreation programs, social services and volunteer programs.

(3) There shall be the equivalent of one (1) full-time program staff person for every thirty (30) prisoners incarcerated.

11 MCAR § 2.176 Staff training.

A. Training plan. Each facility administrator shall develop and implement a training plan for the orientation of new employees and volunteers and provide for continuing in-service training programs for all employees and volunteers.

1. The training plans shall be documented and describe curriculum, methods of instruction and objectives.

2. In-service training plans shall be prepared annually and orientation training plans reviewed and revised to changing conditions.

B. Orientation training. All custody personnel shall complete a minimum of twenty-four (24) hours of orientation training to their duties and responsibilities.

1. Such training shall be satisfactorily completed no more than ninety (90) days from the time of employment.

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2. Orientation training shall include instruction in the state laws and state rules pertaining to staff duties. (Mandatory)

C. Probationary period training. All custody personnel shall satisfactorily complete a Department of Corrections approved facility operations programmed instruction course or equivalent training prior to completion of a probationary period.

D. In-service training. All custody personnel, middle and non-management professional personnel shall complete a minimum of twenty-four (24) hours of in-service training per year. Not applicable to holding facility staff.

E. Management training. Management personnel and facility administrators who have not completed comparable training or who have not had two (2) or more years administrative experience shall complete the facility orientation training.

F. Ancillary functions. Personnel shall be provided to perform ancillary functions such as transportation or court escort to the extent necessary to insure that security, supervision of prisoners, the administration of program activities, and the efficient operation of the facility are not reduced or jeopardized by such activities. Part-time and relief staff shall complete orientation training appropriate to the facility's classification.

11 MCAR § 2.177 Staff deployment, job descriptions, work assignments, post orders, policies and procedures.

A. Job descriptions. Each facility administrator shall develop written job descriptions for all position classifications and post assignments which define responsibilities, duties and qualifications.

B. Work assignments. Work assignments shall be consistent with qualifications as stated in job descriptions and the approved staffing plan of the facility.

C. Policy and procedure manuals. All policies and procedures concerning the facility's operation shall be made available to all employees at the time of employment and as revised thereafter. Policy and procedure manuals shall be developed and implemented for the following areas:

1. Emergency situations;
2. Escape;
3. Fire;
4. Admission and release of prisoners;
5. Laundry;
6. Food service;
7. Canteen;
8. Visiting;
9. Security procedures.

D. Personnel policies. Written personnel policies shall be developed by the facility administrator and governing body which specify hours of work, vacations, illness, sick leave, holidays, retirement, employee health services, group insurance, evaluation procedures, promotions, personal hygiene practices, attire, conduct, disciplinary actions and other items which will enable employees to perform their duties properly.

E. Merit system and collective bargaining. Nothing in this rule shall be construed to prevent the establishment of job descriptions, work assignments, channels of communications, or personnel policies with merit systems or collective bargaining agreements.

11 MCAR § 2.178 Records and reports.

A. Maintenance of records and reports.

1. The following records, reports and statistics shall be maintained:
 - a. Admission and release records; (Mandatory)
 - b. Prisoner personal property records;
 - c. Clothing, linen and laundry records;
 - d. Records of budget requests and work orders;
 - e. Special occurrence records; (Mandatory)
 - f. Records of policies and procedures;
 - g. Employee personnel records;
 - h. Records of staff training;

- i. Accounting records;
- j. Registers; (Mandatory)
- k. Food service records;
- l. Daily logs;
- m. Medical and dental records;
- n. Programming records (holding facilities exempted);
- o. Disciplinary records; and
- p. Good time records (holding facilities exempted).

2. The Department of Corrections shall make available sample approved forms upon request on items A. 1. a.-p.

B. Storage and preservation of records. Space shall be provided for the safe storage of records, and records shall be preserved in accordance with law. (Mandatory)

C. Filing and disposition of prisoner records. Prisoner records shall be incorporated into individual folders and filed.

D. Confidentiality of and access to prisoner records. Confidentiality of prisoner records and prisoner access to factual (non-confidential) data in their personal files shall be provided in conformity with state law. (Mandatory)

11 MCAR § 2.179 Prisoner welfare.

A. Separation. A combination of separate living spaces, sanitation facilities, activity spaces, cell units and detention rooms shall be provided to properly segregate prisoners pursuant to Minn. Stat. § 641.14. (Mandatory)

1. The following prisoners shall be housed separately: female prisoners from male prisoners, juvenile prisoners from adult prisoners and insane prisoners from all other prisoners. (Mandatory)

2. Supervision of coeducational activities shall be provided at all times.

B. Classification.

1. Holding facilities shall comply with separation standards.

2. Lockups, jails and adult corrections facilities shall screen all admissions at the time of booking for the purpose of determining prisoner classification by sex, age, category of offense, degree of escape risk, assaultive/non-assaultive, and other criteria designed to provide for the safety of prisoners, staff and the community, and shall develop and implement a written classification plan or system which includes specific criteria by which prisoners are assigned to housing units.

C. Information to prisoners.

1. Copies of policies and rules shall be made available to all prisoners concerning:

- a. Policies and rules governing conduct and disciplinary consequences;
- b. Procedures for obtaining personal hygiene and canteen items; and
- c. Policies governing visiting, correspondence, bathing, laundry and clothing and bedding exchange.

2. Each prisoner shall be provided information on program options and activities within twenty-four (24) hours (excluding weekends and holidays) of admission. Staff shall review this verbally with prisoners who are unable to read. Holding facilities are exempt from this rule.

3. Every prisoner admitted to any facility shall be advised of the official charge or legal basis for detention and confinement, information gathered and to whom disseminated. (Mandatory)

D. Administrative segregation and prisoner discipline.

1. Administrative segregation.

a. Each facility administrator shall develop and implement policies and procedures for administrative segregation.

b. Administrative segregation shall consist of separate and secure housing, but shall not involve any more deprivation of privileges than is necessary to obtain the objective of protecting the prisoner, staff or public.

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c. The status of any prisoner placed on administrative segregation shall be reviewed by the facility administrator or his designee minimally every thirty (30) days and the review shall be documented and placed in the prisoner's file.

2. All facilities shall have a prisoner discipline plan, which explains the administrative sanctions for specific behaviors, omissions, the administrative process for handling major and minor violations, the right to internal review and the review process. (Mandatory)

3. Disciplinary segregation.

a. Disciplinary segregation shall be used only in accordance with due process.

b. The status of any prisoner placed on disciplinary segregation subsequent to a due process hearing shall be reviewed by the facility administrator or his designee at least once every thirty (30) days.

c. Any prisoner placed in disciplinary segregation prior to a due process hearing shall have a due process hearing within seventy-two (72) hours of such segregation (exclusive of holidays and weekends) unless documented cause can be shown for delays. As examples:

(1) Prisoner requests for delay; or

(2) Logistically impossible as in the case of mass disturbances.

4. Other limitations on disciplinary actions.

a. The disciplinary cells shall have minimum furnishing and space specified in these rules.

b. The decision to deprive prisoners of articles of clothing and bedding as a result of the prisoner's destruction of such items shall be reviewed by the officer in charge during each eight (8) hour period and the review shall be documented.

c. The delegation of authority to any prisoner or group of prisoners to exercise the right of punishment over any other prisoner or group of prisoners is prohibited.

d. No prisoner shall be deprived of the use of materials necessary to maintain an acceptable level of personal hygiene.

5. Instruments of restraint, such as handcuffs, chains, irons and straightjackets shall not be used as punishment.

a. Instruments of restraint shall not be used except in the following circumstances:

(1) As a precaution against escape during a transfer;

(2) On medical grounds by direction of a consulting or attending physician or psychologist; or

(3) By order of the facility administrator or person in charge in order to prevent a prisoner from injuring himself or others or from damaging property.

b. The facility administrator shall develop written policies and procedures to govern the use of restraints.

c. Such instruments shall not be applied for any longer time than is strictly necessary.

d. Each incident involving the use of restraints consistent with D.5.a.(2) or D.5.a.(3) shall be documented and on file.

6. Disciplinary records shall be maintained on all documented disciplinary infractions and punishment administered.

E. Activities.

1. Each facility administrator shall develop and implement a written plan for the constructive scheduling of prisoner time which shall be consistent with the established legal rights of prisoners, the type and status of prisoners detained and the facility's classification.

2. Prisoners shall have an opportunity to participate in religious services and counseling.

a. The facility administrator shall arrange with the clergy to conduct religious services and provide counseling if requested.

b. Prisoners requesting private interviews or counseling (not capable of being audio monitored), regarding religious, personal or family problems with accredited clergy, nuns, seminarians and laypersons active in community church affairs, shall be afforded this opportunity within such policies as are reasonable and necessary to protect the facility's security.

c. No prisoner shall be required to attend religious services and religious services shall be held in such a location that the prisoners who do not wish to participate are not exposed to the service.

d. Any prisoner desiring to read the Bible or sacred book of another religion shall be provided a copy at the expense of the appointing authority. (Mandatory)

e. Attendance or lack of attendance at religious services shall not be considered a criteria for any rights or privileges within the facility.

3. The facility administrator shall develop a library service including:
 - a. Access to current leisure reading material such as books, magazines and newspapers;
 - b. Textbooks necessary to complete a course of study to the extent resources permit; and
 - c. Legal books and references requested by prisoners to the extent resources permit. The facility's governing body shall not be responsible for purchasing such materials.
 4. Work assignments and education.
 - a. A plan shall be developed in conjunction with the local school to meet educational needs of juveniles detained. (Mandatory for eight (8) day detention of juveniles.)
 - b. Juvenile. The facility shall develop a policy and procedure on work to include:
 - (1) Work activities such as maintaining own room and maintaining activity areas;
 - (2) Exemption from performance of personal duties for staff or maintenance areas away from the facility;
 - (3) Eligibility criteria for work activities; and
 - (4) Statement that care shall be taken not to require juveniles to perform work they cannot physically perform.
 - c. Adult. (Applies to lockups, jails and adult corrections facilities.) The facility shall develop a policy and procedure on work to include:
 - (1) Adults waiting court appearance shall not be compelled to participate in work or rehabilitation programs beyond maintaining the immediate living area;
 - (2) Work programs for both sentenced and voluntary unsentenced prisoners;
 - (3) Unsentenced prisoners shall work on a voluntary basis only;
 - (4) Eligibility criteria for work activities;
 - (5) A statement that sentenced prisoners shall not be compelled to work more than ten (10) hours per day; and (Mandatory)
 - (6) A statement that work shall not be required which cannot be done due to physical limitations.
 5. The facility administrator shall develop a plan providing opportunities for physical exercise and recreational activities for all prisoners consistent with the facility's classification. The plan shall include:
 - a. Rules necessary to protect the facility's security and the prisoner's welfare;
 - b. A minimum of one (1) hour of activity each day in lockups and jails;
 - c. A minimum of two (2) hours daily of scheduled supervised physical exercise and recreational activities in adult corrections facilities;
 - d. Indoor space and equipment for active recreation for jails and adult corrections facilities; and
 - e. Outdoor recreational space, equipment and supportive staff for outdoor recreational programming in adult corrections facilities consistent with weather conditions.
 - f. Juveniles shall be allowed the opportunity to be involved in a minimum of two (2) hours of active recreation per day and two (2) hours of leisure time activities per day. A minimum of two (2) hours of each activity per day shall be allowed in a program area separate and distinct from the juveniles living area and shall be pre-planned and structured. (Mandatory for eight (8) day detention of juveniles.)
 - g. The facility administration shall develop and implement in-cell or in-detention room programs for those juveniles considered to be too dangerous to release from the cell or detention room. (Mandatory for detention of juveniles.)
 - h. Facilities approved for eight (8) day detention of juveniles shall provide leisure time activities and equipment such as television, radio, table games and hobby craft items. (Mandatory for eight (8) day detention of juveniles.)
- F. Visiting.

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1. Each facility administrator shall develop and implement a prisoner visiting policy. The policy shall be in writing and shall include:

- a. Space for non-monitored visits between the prisoner and his attorney;
- b. Schedule of visits which include days and times;
- c. Establishment of a uniform number of permissible visits and the number of visitors permitted per visit;
- d. Policies for parents, guardians and attorneys visiting juvenile prisoners shall be as unrestrictive as is administratively possible. The initial visit for parents, guardians and attorneys shall be permitted at any time; (Mandatory)
- e. Adult prisoners shall be permitted an initial visit with a member or members of their immediate family at the next regularly scheduled visiting period;
- f. Lockups, jails and adult corrections facilities shall provide a minimum of eight (8) visiting hours per week;
- g. Visits shall be allowed for identified members of a prisoner's immediate family, his counsel and clergy;
- h. When a visit to a prisoner is denied for reasonable grounds on the belief that the visit might endanger the security of the facility the action and reasons for denial shall be documented;
- i. Visitors shall register, giving names, addresses, relationship to prisoner and nature of business; and
- j. Any area used for prisoner visiting shall not be capable of audio monitoring.

G. Correspondence.

1. Each facility administrator shall develop a plan for prisoner mail consistent with established legal rights of prisoners and reasonable and necessary facility rules to protect the facility's security.
2. The volume of written mail to or from a prisoner shall not be restricted.
3. Mail shall not be read or censored if it is between a prisoner and an elected official, officials of the Department of Corrections, the Ombudsman for Corrections, attorneys or other officers of the court. Inspection of incoming mail is permitted in the presence of the prisoner. (Mandatory)
4. Cash, checks or money orders shall be removed from incoming mail and credited to the prisoner's accounts.
5. If contraband is discovered in either incoming or outgoing mail, it shall be removed.
6. Indigent prisoners shall receive a postage allowance sufficient to maintain communications with the persons listed in 11 MCAR § 2.178 G.3.

H. Clothing, bedding and laundry services.

1. Clothing.

- a. All prisoners admitted to the facility and assigned to a living unit shall be issued a set of facility clothing if kept seventy-two (72) hours. Personal clothing may be returned after laundering at the discretion of the facility administrator. The clothing issued shall consist of clean socks, and suitable outer and undergarments. (Mandatory)
- b. Clothing shall be exchanged twice each week, at a minimum.
- c. The facility shall have available sufficient clothing to insure each prisoner neat, clean clothing appropriate to the season.
- d. Prisoner's excess personal clothing shall be either mailed to, picked up by, or transported to designated family members or stored in ventilated lockers or boxes designed for this purpose and properly identified, inventoried and secured.
- e. Prisoners possessing excess personal property shall sign and receive a copy of the inventory record.

2. Linens and bedding.

- a. Each prisoner admitted to the facility shall be issued:
 - (1) One (1) bath towel, one (1) hand towel, one (1) washcloth;
 - (2) One (1) clean, firm fire-retardant mattress; (Mandatory)
 - (3) Two (2) sheets or one (1) sheet and a clean mattress cover; (Mandatory)
 - (4) Blankets sufficient to provide comfort under existing temperature conditions; (Mandatory)
 - (5) One (1) pillow and one (1) pillow case.
- b. Clean linens shall be furnished once each week, at a minimum.

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c. The facility administrator shall develop a policy and procedure for removing clothing and bedding from a prisoner. The following shall be included:

(1) Clothing and bedding shall be removed from a prisoner only when the prisoner's behavior threatens the health, safety and/or security of self, other persons and/or property;

(2) Clothing and bedding shall be returned to the prisoner as soon as it is reasonable to believe that the behavior which caused the action will not continue.

3. Laundry services.

a. Laundry services shall be managed so that daily clothing, linen and bedding needs are met.

b. Care shall be taken to maintain separation of clean and soiled linens and clothing in the collection, storage and transportation process in accordance with standards required by the Minnesota Department of Health.

c. Where laundry service is obtained from an outside establishment, the service shall be provided under a written agreement which shall specify that the service meets standards required by the Minnesota Department of Health.

d. Prisoner's personal clothing shall be laundered in accordance with appropriate washing procedures for fabrics.

I. Emergencies and special occurrences.

1. The facility administrator shall develop written emergency plans for handling hostage incidents, escapes, suicide, serious illness, accident, power failure, prisoner disturbances and assaults. The plans shall include: (Mandatory)

- a. Location of alarms and fire fighting equipment;
- b. Emergency drill policy;
- c. Specific assignments and tasks for personnel;
- d. Persons and emergency departments to be notified;
- e. Procedure for evacuation of prisoners; and
- f. Arrangements for temporary confinement of prisoners.

2. Planning shall include policies and procedures designed to protect the public by securely detaining prisoners who present a danger to the community or to themselves.

3. There shall be a review of emergency procedures once every three (3) months. This shall include:

- a. Assignment of persons to specific tasks in case of emergency situations;
- b. Instructions in the use of alarm systems and signals;
- c. Systems for notification of appropriate persons outside the facility;
- d. Information on the location and use of emergency equipment in the facility; and
- e. Specification of evacuation routes and procedures.

4. All incidents of a special or serious nature which endanger the lives of staff or prisoners and/or physical plant, shall be reported in writing to the Department within ten (10) days.

a. Such reports shall include the name(s) of person(s) involved (staff and prisoners), nature of the special occurrence, actions taken, and the date and time of the occurrence.

b. Special occurrences shall include:

- (1) Suicide;
- (2) Homicide;
- (3) Death (other than suicide or homicide);
- (4) Serious injury or illness incurred subsequent to detention;
- (5) Escape or runaway;

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- (6) Fire causing serious damage;
- (7) Riot;
- (8) Assaults requiring medical care;
- (9) Other serious disturbances; or
- (10) Occurrences of infectious diseases and disposition.

c. Special occurrences shall be reported on forms provided by the Department of Corrections or comparable forms used by the facility.

d. In the event of an emergency such as serious illness, accident, imminent death or death, the prisoner's family or others who maintain a close relationship with him shall be notified.

5. Prisoner death. When a prisoner's death occurs:

- a. The date, time and circumstances of the prisoner's death shall be recorded in the prisoner's record;
- b. If the prisoner dies in the facility, the coroner's office shall be notified;
- c. Personal belongings shall be handled in a responsible and legal manner;
- d. Records of a deceased prisoner shall be retained for a period of time in accordance with law;
- e. The facility administrator shall observe all pertinent laws and allow appropriate investigating authorities full access to all facts surrounding the death.

11 MCAR § 2.180 Food service.

A. General requirements. The goals of food service in each facility shall be to provide food and beverages to prisoners that are nutritionally adequate, palatable, produced in a manner to prevent foodborne illness, adequate quantity and variety, served at appropriate temperatures and prepared by methods which conserve nutritional value.

B. Food handling practices. Food service shall be provided in accordance with the Minnesota Department of Health (7 MCAR §§ 1.161-1.170). (Mandatory)

C. Dietary allowances. Nutritional needs of prisoners shall be met in accordance with their needs, physician's orders and meet the dietary allowances contained in 11 MCAR § 2.109 C. All lockups, jails, adult corrections facilities and holding facilities shall have menu planning sufficient to provide each prisoner the following specified food serving per day.

- 1. Two (2) or more servings per day of meat or protein. A serving of meat or protein is defined as:
 - a. 2-3 ounces cooked (equivalent to 3-4 ounces raw) of any meat without bone, such as beef, pork, lamb, poultry, variety meats such as liver, heart and kidney.
 - b. 2 slices prepared luncheon meat.
 - c. 2 eggs.
 - d. 2 ounces of fresh or frozen cooked fish or shellfish, or 1/2 cup canned fish.
- 3. 1/2 cup cooked navy beans plus one ounce of animal protein.
- 2. Two (2) or more servings per day of milk. A serving is defined as eight (8) ounces (one cup) of milk. A portion of this amount may be served in cooked form, such as cream soups or desserts.
 - a. 1 ounce of American cheese for 3/4 cup milk.
 - b. 1/2 cup creamed cottage cheese for 1/3 cup milk.
 - c. 1/2 cup ice cream for 1/4 cup milk.
- 3. Two (2) or more servings per day of vegetables, one of which is deep green or yellow for vitamin A. A serving is defined as 1/2 cup. Potatoes may be included once daily as a vegetable.
- 4. Two (2) or more servings per day of fruit, one of which is citrus (i.e., orange, grapefruit) or tomato or other good source of vitamin C. A serving of citrus fruit or tomato is defined as:
 - a. 1 medium orange or 4 ounces of orange juice.
 - b. 1/2 grapefruit or 4 ounces of grapefruit juice.
 - c. 1 large tomato or 8 ounces of tomato juice.
- 5. Four (4) or more servings per day of whole grain or enriched cereal and bread products. A serving is defined as:

- a. 1 slice bread.
- b. 1/2 cup cooked cereal.
- c. 3/4 cup dry cereal.
- d. 1/2 cup macaroni, rice, noodles and spaghetti.

6. Use butter, fortified margarine, cream or salad oil in moderate amounts to make food palatable.

7. Additional servings of the above foods may be used or the following foods added to meet caloric needs: soups, sweets such as desserts, sugar, jellies, or other fats such as bacon, cream and salad dressings.

D. Frequency of meals. There shall not be more than fourteen (14) hours between a substantial evening meal and breakfast. Where prisoners are not routinely absent from the facility for work or other purposes, at least three (3) meals shall be made available at regular times during each twenty-four (24) hour period.

E. Therapeutic diets. Any facility housing prisoners in need of medically prescribed therapeutic diets shall have documentary evidence that such diets are provided as ordered by the attending physician. (Mandatory)

F. Use of food in discipline. Food shall not be withheld as punishment. (Mandatory)

G. Supervision of meal serving. All meals shall be served under the direct supervision of staff.

H. Menu records. Records of menus and of foods purchased shall be filed for one year.

I. Hot meal minimum. A minimum of one (1) hot meal shall be provided for each twenty-four (24) hours of confinement.

J. Canteen.

1. All lockups, jails and adult corrections facilities with approved capacities of fifty (50) or less shall provide prisoners with a printed list of approved canteen items to be purchased by a facility staff member at local stores if the facility does not operate a canteen in the facility.

2. All such facilities with approved capacities over fifty (50) shall establish, maintain and operate a canteen in the facility.

3. Holding facilities are not required to provide canteen services.

4. All vending machines shall meet Minnesota Department of Health and Minnesota Department of Agriculture requirements.

K. Budgeting, purchasing and accounting. The facility administrator of lockups, jails, and adult corrections facilities shall establish policies and procedures for food service budgeting, purchasing and accounting.

L. Containers and food storage.

1. All food or food products, prepared or in bulk shall be stored in approved seamless containers after opening of the original container. Dry milk and milk products after opening shall be stored in seamless, air-tight containers.

2. Non-perishable food, and single service articles shall be stored off the floor on washable shelving in a ventilated room. It shall be protected from dust, flies, rodents, vermin, overhead leakage and other sources of contamination, and shall be placed away from areas with excessive heat.

3. All perishable food (fresh fruit and vegetables) and potentially hazardous food (meat and dairy products) shall be stored off the floor on washable, corrosion-resistant shelving under sanitary conditions, and at temperatures which will protect against spoilage. Meat and dairy products shall be stored at forty (40) degrees Fahrenheit or below, and fruit and vegetables at fifty (50) degrees Fahrenheit or below. When stored together, the lower temperature shall apply. Temperatures shall be monitored by an accurate thermometer.

4. The storage of detergents, cleaners, pesticides and other non-food items, including employees' personal items, is prohibited in food storage areas.

5. Returned portions of food and beverages from individual servings shall not be reused unless such food or beverage is served in a sealed wrapper or container which has not been unwrapped or opened.

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6. Ice shall be stored and handled in a sanitary manner. Stored ice shall be kept in an enclosed container. If an ice scoop is used, the scoop shall be stored in a separate compartment to prevent the handle from contact with the ice.

M. Transport of food. Food shall be covered during transport through non-dietary areas, but need not be covered when served in a contiguous dining area. The food service system shall be capable of maintaining hot foods at one-hundred-fifty (150) degrees Fahrenheit or higher; cold foods at forty (40) degrees Fahrenheit or lower. A dumbwaiter or conveyor, which cab or carrier is used for the transport of soiled linen or soiled dishes, shall not be used for the transport of food.

11 MCAR § 2.181 Security.

A. Policies and procedures. Security policies and procedures shall be written, operational and include the following:

1. Control and recovery of contraband; (Mandatory)
2. Visitor and visit control;
3. Delivery and service procedure;
4. Equipment maintenance and efficiency;
5. Prohibition on firearms in prisoner areas; (Mandatory)
6. Search and shakedown schedules and procedures;
7. Escort of prisoners outside security areas;
8. One-half hour interval security inspection routines (one-hour intervals are acceptable if proper auditory supplements are provided); (Mandatory)
9. Escape prevention and action plans;
10. Tool, medication, key and weapon control procedures;
11. Count procedure;
12. Classification of prisoners;
13. Lockup and disciplinary procedures; and
14. Riot prevention and control procedures.

B. Admissions.

1. Admission policies and procedures shall include the following:

- a. All admissions and prisoners on release status returning to the facility shall be thoroughly searched;
- b. Showering and delousing if indicated;
- c. An assessment of health status;
- d. Security classification;
- e. Inventory of prisoner's property;
- f. Fingerprinting and photographing, if appropriate; and
- g. Completion of admission form.

2. No prisoner shall be received or released by the staff of a facility until the arresting or escorting officer has produced proper credentials and/or until the proper documents have been completed, identifying the purpose for detention or release. (Mandatory)

3. All intake procedures shall be conducted in a manner and location that assures the personal privacy of the prisoner and the confidentiality of the transaction from unauthorized personnel.

C. Releases.

1. Upon release of a prisoner, the property of that prisoner, unless held for authorized investigation or litigation, shall be returned with a receipt for the prisoner to sign.

2. Prisoners shall be permitted to make arrangements for transportation prior to release.

D. Search and shakedowns.

1. Visitors who seek to enter the security area of the facility shall not be permitted admission if they refuse to submit to a requested search conducted by a staff member of the same sex.

2. The facility shall be regularly inspected for contraband, evidence of breaches in security, and inoperable security equipment.

3. All materials delivered to or transported from the facility shall be inspected for contraband prior to distribution.

E. Locks and keys.

1. All keys to security locks shall be properly tagged and stored in a secure cabinet within a secure area, and out of reach of the prisoners or the public. (Mandatory)

a. At least one new complete set of facility keys shall be kept on hand for replacement purposes.

b. Keys that serve a critical security purpose shall be easily identifiable and never issued except upon order of the facility administrator or person in charge, and in accordance with established procedure.

c. No security keys shall be made available to prisoners regardless of status.

2. All locks to security doors or gates shall be inspected regularly to insure efficient operation.

a. No lock to a security door or gate shall be permitted to be inoperable or left in an unsuitable condition.

b. No prisoner shall be placed in a cell or area which has inoperable locks. (Mandatory)

F. Dangerous materials. Materials dangerous to either security or safety shall be properly secured. (Mandatory)

G. Count procedure.

1. Each facility shall have a written policy describing the system of counting prisoners.

2. Formal counts shall be completed with an official entry made in the daily log after each mass movement and at least once each eight (8) hours.

MCAR § 2.182 Environmental-personal health and sanitation.

A. Availability of medical and dental resources. (Mandatory)

1. Each facility shall have a licensed physician(s) or medical resource(s) such as a hospital or clinic designated for the medical supervision and treatment of prisoners. Resources shall insure twenty-four (24) hour a day service.

2. Each facility shall have emergency dental care available to prisoners.

3. Ambulance services shall be available on a twenty-four (24) hour a day basis.

4. A prisoner shall be examined by trained medical personnel if the prisoner is visibly ill, chronically ill, or when it is suspected that medical attention is necessary.

B. Posting of available resources. A listing of telephone numbers of the medical, dental and ambulance services available shall be posted at each staff station along with the schedule of availability.

C. Hospitalization of a prisoner.

1. Each facility shall have an agreement with a hospital in the same or nearby community permitting admission of a prisoner on the recommendation of the attending physician.

2. When a prisoner requires hospitalization, he shall be guarded on a twenty-four (24) hour per day basis unless one of the following conditions have been satisfied:

a. The prisoner is not in need of custody supervision; or

b. The prisoner is medically incapacitated in the opinion of the attending physician.

D. First aid.

1. All custody personnel responsible for the supervision, safety and well-being of prisoners shall be trained in emergency first aid.

2. All facilities shall have a minimum of one (1) first aid kit located at the facility's control center or primary staff station.

E. Medical and dental records.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

PROPOSED RULES

1. Each facility shall record all complaints of illness or injury and actions taken.
2. Medical or dental records shall be maintained on prisoners under medical or dental care. (Mandatory) Included in the records shall be:
 - a. The limitations and disabilities of the prisoner;
 - b. Instructions for prisoner care;
 - c. Orders for medication including stop date;
 - d. Any special treatment and/or diet;
 - e. Activity restriction; and
 - f. Times and dates when the prisoner was seen by medical personnel.
3. Medical and dental records shall be available to staff for consultation in case of illness and for recording administration of medications.

F. Preventive health services.

1. The facility administrator shall develop and implement a written plan for personal hygiene practices of all prisoners with special assistance for those prisoners who are unable to care for themselves.
2. Delousing materials and procedures shall be approved through consultation with trained medical personnel.
3. Each prisoner shall be permitted daily bathing or showering.
4. Indigent prisoners shall receive personal hygiene items at facility expense. (Mandatory)

G. Delivery, supervision and control of medicine.

1. Delivery of medicine shall be conducted by licensed medical, or nursing personnel or by facility staff who have successfully completed an approved training program on the delivery of medicine for unlicensed personnel.
2. The delivery of legend drugs by unlicensed staff shall be under the direction of a consulting physician.
3. Every facility administrator, in consultation with a licensed physician, shall develop a plan and procedure for the secure storage, delivery and control of medicine. Such plans shall include:

a. Storage.

- (1) Medicine shall be stored in a locked area;
- (2) The storage area shall be kept locked at all times;
- (3) Medicine requiring refrigeration shall be refrigerated and secured;
- (4) Prisoners shall not be permitted in medicine storage area;
- (5) Only staff authorized to deliver medicine shall have access to keys for medicine storage area;
- (6) Stock supplies of legend (prescription-type) drugs shall not be maintained; (Mandatory)
- (7) All prescribed medicine shall be kept in its original container, bearing the original label;
- (8) All poisons and medicine intended for external use shall be clearly marked and stored separate from medicine intended for internal use.

b. Policy shall dictate the delivery of medicine and shall include:

- (1) Medication administered by injection shall be given by a physician, registered nurse or licensed practical nurse. Diabetics under physician order and direct staff supervision shall be permitted to self-administer insulin; (Mandatory)
- (2) Medicine delivered to prisoners shall be self-administered under staff supervision;
- (3) There shall be a means for the positive identification of the recipient of medicine;
- (4) Procedures and records to assure that medicines shall be delivered in accordance with physician instructions, and by whom;
- (5) No prisoner while receiving legend drugs shall receive any non-legend drug without the approval of the attending physician; (Mandatory)
- (6) Procedures for confirming that medicine delivered for oral ingestion has been ingested;
- (7) Procedures for reporting to the physician any adverse reactions to drugs. Any such reports shall be included in the prisoner's file; (Mandatory)

PROPOSED RULES

(8) Procedures for reporting a prisoner's refusal of prescribed medicine to the attending physician, and an explanation made in the prisoner's record; (Mandatory)

(9) Procedures for insuring that no prisoner is deprived of medicine as prescribed because of penalty or staff retaliation; (Mandatory)

(10) Procedures which prohibit the delivery of medicine by prisoners; (Mandatory)

(11) Procedures requiring that a physician be contacted for instructions prior to the next prescribed medicine dosage time for all newly admitted prisoners who are either in possession of prescribed medicine or indicate a need for prescribed medicine. (Mandatory)

c. Records of receipt, the quantity of such drugs, and the disposition of all legend drugs shall be maintained in sufficient detail to enable an accurate accounting.

4. Prescribed medication belonging to a prisoner shall be given to him or to the appropriate authority upon transfer or release. This shall be recorded in the prisoner's file.

5. Unused prescribed medicine shall be destroyed by incineration or by flushing into the sewer system. A notation of the destruction shall be made in the prisoner's record and shall include a statement of what was destroyed, who destroyed it and how it was destroyed.

6. Unused portions of controlled substances shall be handled by contacting the Minnesota Board of Pharmacy. (Mandatory)

7. Methadone programs shall not be made available unless in compliance with all existing laws governing such programs. (Mandatory)

H. Reporting suspected contagious disease. It shall be the responsibility of the facility administrator or person in charge to report to the Minnesota Department of Health any known or suspected contagious disease. (Mandatory)

I. Separation. Prisoners suspected of having a contagious disease shall be separated from other prisoners.

J. Mentally ill prisoners. Policy shall be developed for the management of mentally ill prisoners and shall include:

1. A procedure for determining that a prisoner is mentally ill. A physician or licensed psychologist shall be consulted for this determination;

2. A procedure for managing prisoners who are suspected of being mentally ill and considered to be a danger to self or others;

3. A statement that if a prisoner is mentally ill and procedures are implemented to separate and/or restrain the prisoner, a licensed physician shall be contacted within eight (8) hours and shall approve a written plan which outlines the procedures to be followed in managing the behavior.

4. A criteria and procedure for transferring the mentally ill prisoner to a licensed medical facility. The criteria shall include approval of a licensed physician and shall be done in accordance with Minn. Stat. § 253A.04 Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons. (Mandatory)

K. Housekeeping, sanitation and plant maintenance.

1. The facility shall be kept in good repair to protect the health, comfort, safety and well-being of prisoners and staff.

2. Each person responsible for plant maintenance, housekeeping and sanitation shall develop a written maintenance plan.

3. Housekeeping, sanitation, water supplies, plumbing, sewage disposal, solid waste disposal, and plant maintenance conditions must comply with rules required by the Minnesota Building Code, the Minnesota Fire Marshal's Office, the Minnesota Department of Health, the Minnesota Department of Labor and Industry (O.S.H.A.) and other departmental rules having the force of law. (Mandatory)

4. The facility administrator shall establish a plan for the daily inspection of housekeeping, sanitation and plant maintenance.

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PROPOSED RULES

5. The facility administrator shall submit to the governing body a cost list of repairs and supplies needed in order to maintain the facility. This shall be done on a monthly basis or as part of the annual budget.

6. The facility administrator shall develop policies and procedures designed to detect building and equipment deterioration, safety hazards and unsanitary conditions. Policies and procedures shall include:

a. Requirement that facility staff report unsanitary and unsafe conditions as well as physical plant and equipment repairs and replacement needs; (Mandatory)

b. A process for prioritizing work requests and reporting to the governing body in an expedient manner;

c. A records system for review of budget and work requests, expenditures, dates and actions pursuant to detection of need, submission of work orders and completion of requests; and

7. Any condition in the facility conducive to harborage or breeding of insects, rodents, or other vermin shall be eliminated immediately. (Mandatory)

Department of Revenue Income Tax Division

Proposed Temporary Rule Governing Deposits of Withholding Tax

Request for Public Comment

Notice is hereby given that the Department of Revenue has proposed the following temporary rule for the purpose of determining the timeliness of withholding deposits under Minnesota Laws 1981, Chapter 13.

Persons interested in these rules have 20 days to submit data and views on the proposed temporary rule in writing. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency. Comments should be submitted to:

Mr. Gary P. Mesna
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145

Authority for the adoption of this rule is contained in Minnesota Laws of 1981, Chapter 13. Upon adoption of this temporary rule, it will be submitted to the Attorney General for final approval as to form and legality. The temporary rule will take effect immediately upon the Attorney General's approval.

Clyde E. Allen, Jr.
Commissioner of Revenue

Temporary Rule as Proposed (all new material)

13 MCAR § 1.6301 Deposits of withheld tax. For purposes of determining the timeliness of withholding tax deposits under Minnesota Laws of 1981, Chapter 13, to be codified as Minnesota Statutes, § 290.92, subd. 6(1), the deposit shall be treated as having been made on the earlier of the following dates:

(1) the date actually received by the Department of Revenue, or

(2) the date of mailing, but only if the deposit was mailed on or before the second day prior to the due date (including any extension of time granted for making the deposit). The person required to make the deposit shall have the burden of establishing that the deposit was timely mailed in the United States by United States mail in an envelope or other appropriate wrapper, postage prepaid and properly addressed.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Economic Security Training and Community Services Division

Notice of Extension of Adopted Temporary Rule Governing Emergency Residential Heating Grants

The temporary rule proposed and published at *State Register*, Volume 5, Number 36, pp. 1394-1397, March 9, 1981 (5 S.R. 1394), and subsequently adopted, is now extended for 90 days.

Minnesota State Retirement System Board of Directors

Adopted Amendments to the Rules of the Board of Directors of the Minnesota State Retirement System

The amendments and repeal of rules proposed and published at *State Register*, Volume 5, Number 26, pp. 1044-1048, December 28, 1980 (5 S.R. 1044) were adopted by the board February 27, 1981, approved by the Office of the Attorney General, April 22, 1981 and filed with the Office of the Secretary of State April 22, 1981.

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Louis N. Ritten & Co., Inc.,
Appellant,

v.

The Commissioner of Revenue,
Appellee.

Tax Court

In the Matter of An Appeal from the Commissioner's Order Dated October 2, 1979 Relating to Corporation Income Tax Liability for the Taxable Years 1972, 1973 and 1974.

Docket No. 3009

Order Dated April 22, 1981.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

TAX COURT

The above entitled matter came on for hearing before the Honorable John Knapp, Judge of the Tax Court of the State of Minnesota, at 444 Lafayette Road, St. Paul, Minnesota, on May 14, 1980, beginning at approximately 10:00 a.m. With consent of respondent and permission from the Court, Henry M. Grennan, Esq., 20 N. Wacker, Chicago, Illinois, appeared for Appellant and Paul R. Kempainen, Special Assistant Attorney General, appeared for Appellee.

This is an appeal from the order of the Commissioner of Revenue dated October 2, 1979, denying a claim for refund of excise taxes paid by the Appellant on interest from the United States government obligations for calendar years 1972, 1973 and 1974. The claims for refunds are in the amount of \$15,958.26.

Issue

The issue is whether or not the business of the Appellant "consists exclusively of foreign commerce, inter-state commerce, or both" within the meaning of Minn. Stat. § 290.03. Under that statute interest earned on investments in obligations of the United States are exempt from Minnesota income tax.

Decision

The Appellant is not engaged "exclusively" in inter-state commerce and is properly taxed under Minn. Stat. § 290.02.

From the testimony adduced at the trial and from the files and records herein, the Court now makes the following:

Findings of Fact

1. The Appellant is a Minnesota corporation engaged primarily in the business of trading commodity futures, and investing the income therefrom. It is duly registered as a futures commission merchant with the U. S. Commodity Futures Trading Commission. The tax years at issue herein are 1972, 1973 and 1974.

2. The Appellant was incorporated under the laws of Minnesota in 1928. Until sometime in the 1960's, Appellant's sole offices were located within the State of Minnesota, but in the 1960's offices were also opened up in Chicago. During each of the tax years in issue, the Appellant filed its state and federal income tax returns from its Minnesota office address at 109 Grain Exchange Building, Minneapolis, Minnesota.

3. At its Minneapolis office the Appellant employs six or seven employees; which includes the firm's Minneapolis brokers, three of the firm's officers (one of whom is also a broker), and a support staff. All of the Appellant's employees are licensed by the Commodity Futures Trading Commission and are governed thereby.

4. The mechanics of futures trading is outlined in an excerpt from the committee's report on H. R. 13113, which is appended to the committee print of the Commodity Futures Trading Commission Act of 1974 on page 128 and 129. It reads as follows:

The Mechanics of Futures Trading

Placing Orders

The customer contacts a solicitor or account executive who in turn transmits the order, either directly or through a central office, to the exchange trading floor. The order is received on the trading floor by the firm's phone man. After recording and time-stamping the order, he gives it to a runner who carries the order to a floor broker in the designated trading area for that commodity. These trading areas are called pits or rings and each delivery month of a commodity is generally traded in a certain area of the pit or ring. Some firms no longer telephone orders to the floor. Instead, the orders are fed through a computerized system that transmits them to the floor via teletype.

Execution of Trades

The actual trading of futures contracts takes place in the noisy, boisterous setting of an auction-type market. The Commodity Exchange Act requires that all futures transactions in regulated commodities be executed on a commodity exchange designated by the Secretary of Agriculture as a "contract market." Both the Commodity Exchange Act and the rules and regulations of the commodity exchanges require that futures transactions be executed openly in a competitive manner. Section 1.38 of the regulations under the Commodity Exchange Act reads as follows: "All purchases and sales of any commodity for future delivery on or subject to the rules of a contract market shall be executed openly and competitively by open outcry or posting of bids and offers or by other equally open and competitive methods, in the trading pit or ring or similar place provided by the contract market, during the regular hours prescribed by the contract market for the trading in such commodity." Certain carefully prescribed exceptions to competitive trading are allowed, but they do not nullify the general requirement of open and competitive trading.

The purpose of this requirement is to ensure that all trades are executed at competitive prices and that all trades are focused into the centralized marketplace to participate in the competitive determination of the price of futures contracts. This system also provides ready access to the market for all orders and results in a continuous flow of price information to the public.

The rules requiring competitive trading also require that all trades be executed in the area and during the hours designated by the contract market. Other exchanges can trade virtually identical contracts for the same commodity, provided they meet the

requirements of a contract market as specified by the Commodity Exchange Act and are so designated by the Secretary of Agriculture.

Clearing Trades

After a trade has been executed, the confirmation of the trade retraces the path of the initial order within a few minutes. Final confirmation, however, cannot be made until the trade goes through the clearinghouse. In the clearinghouse, both sides of the trade must be matched, and any differences between the buyer and seller must be referred to the clearing firms involved for reconciliation.

A brief description of the clearing procedure for futures trading points out one of the major distinctions between futures and securities trading. Unlike securities, there is no certificate or document exchanged in a futures transaction. The futures contract is embodied in the rules and regulations of the contract market.

The clearinghouse (or clearing association) performs the functions of matching all buys and sells which are executed each day and of assuring the financial integrity of all futures transactions. As trades are matched and confirmed at the end of each trading session, the clearinghouse takes the opposite side of every transaction. It becomes the seller of all "buys" and the buyer of all "sells." Thus, when a trader establishes a position in the market, he does so with the clearinghouse, and when he offsets his position he offsets it with the clearinghouse. The clearinghouse assumes the legal responsibility for the opposite side of every transaction made on the contract market.

The clearinghouse requires that its members deposit margins to secure their firm's futures transactions. The clearing members, in turn, require margins from their customers. If the market moves against the open contracts of a clearing firm, that firm's initial margin is impaired and additional margin will be required.

Daily payments or receipts also occur between the clearinghouse and its members to account for daily price changes. The clearinghouse maintains the open accounts of member firms at the current market prices. At the end of each day, these accounts are adjusted to the day's settlement price for each contract. Firms with net gains receive payment from the clearinghouse, while firms with net losses make payments to the clearinghouse. These receipts and payments of the clearinghouse exactly offset one another, with the clearinghouse merely transferring equity from losers to winners.

5. Pursuant to rules of the Commodity Futures Trading Commission, the Appellant is required, as a part of its business activities, to invest some of its customers' funds in federal government bonds and notes. This is not "another" business activity, but only an ancillary activity of its business. If the Appellant did not purchase the required securities, it would be in violation of the Commodity Futures Trading Act.

6. During the taxable year 1974 the Appellant maintained a savings account in its own name and using its own excess funds at the Midland National Bank of Minneapolis, Minnesota. During 1974 this account earned interest for the Appellant in the amount of \$63,243.00. Throughout the years in issue the Appellant also maintained other banking connections with the Midland National Bank of Minneapolis.

7. During each of the years in issue the Appellant invested segregated customer funds in its possession, which had been put up as margins to cover trades, in U.S. Treasury bills and bonds. The income realized from these transactions was duly reported by the Appellant on its income tax returns in the following amounts:

1972	\$ 24,239.87
1973	\$182,660.00
1974	\$282,463.00

These U.S. Treasury bills and bonds were purchased by the Appellant through the Midland National Bank of Minneapolis as well as through a Chicago bank. Those U.S. securities bought in Minnesota were kept in safe keeping at the Midland National Bank; and when they were eventually sold or turned in by the Appellant this was also done at the Midland National Bank in Minneapolis.

8. As mandated by regulations controlling the business activities of commodity brokers, the Appellant also invested in other marketable securities which were shown as assets on its balance sheets for each of the years in question, as follows:

Balance Sheet as of	Cost Value
12-31-72	\$94,325.00
12-31-73	\$76,725.00
12-31-74	\$84,925.00

9. During each of the years in issue the Appellant also was required to own shares or memberships in the Minneapolis Grain Exchange Clearing Corporation, which were treated as capital assets. As a result of this ownership, the Appellant received dividends from the Minneapolis Grain Exchange Clearing Corporation in the following amounts:

Year	Dividends
1972	\$ 500.00
1973	\$3,500.00
1974	\$3,000.00

10. The Appellant originally filed its Minnesota Corporate Income Tax returns for each of the years in question on the basis that it was subject to the excise tax on corporations imposed by Minnesota Statutes § 290.02. On these returns, the Appellant included the interest income from its investments from U.S. securities.

11. On or about March 17, 1976, the Appellant filed claims for refund alleging that during the years in question it should have been subject to the net income tax on corporations imposed by Minn. Stat. § 290.03, and that accordingly its interest income from U.S. securities was exempt from Minnesota taxation pursuant to Minn. Stat. § 290.08, subd. 8.

12. After administrative audit and review by the Department of Revenue, including a conference with Appellant's representative, the Commissioner issued his Order dated October 2, 1979, disallowing the claims for refund for each of the years in question. By his Order the Commissioner determined that the Appellant was a corporation "taxable under section 290.02" and therefore not eligible to claim the exemptions set forth in subd. 8 of Minnesota Statute § 290.08.

Conclusions of Law

1. The Appellant is a domestic corporation subject to the normal excise tax imposed upon such corporations by Minn. Stat. § 290.02.

2. Appellant is not subject to taxation under Minn. Stat. § 290.03, because its business within this state does not "consist exclusively of foreign commerce, inter-state commerce, or both."

3. As a corporation taxable under Minn. Stat. § 290.02, Appellant's interest income from United States securities is subject to taxation by Minnesota pursuant to Minn. Stat. § 290.08, subd. 13.

4. The Commissioner's Order herein dated October 2, 1979, is correct and proper and should be affirmed in all respects.

Order for Judgment

The Order of the Commissioner of Revenue is hereby affirmed.

Let judgment be entered accordingly. A stay of 15 days is hereby ordered.

MINNESOTA TAX COURT
John Knapp, Chief Judge

Dated: April 22, 1981.

Memorandum

Appellant acknowledges that it has a tax liability to the State of Minnesota. What is at issue in this case is: Under what section of Minnesota Statutes is the tax obligation computed? When Appellant originally filed its Minnesota tax return, it had computed its tax liability under § 290.02. This section imposes an excise tax on corporations. Upon review of the Minnesota tax law and regulations and applicable federal law, the Appellant decided that it should have been computing its Minnesota tax obligation under § 290.03 of the Minnesota Income Tax Act. Minn. Stat. § 290.03 is similar to § 290.02 except that it imposes an income tax instead of an excise tax, and under § 290.03 interest income from United States obligations is not taxed. Minn. Stat. § 290.03 applies to domestic corporations "which own property within the State or whose business in this State . . . consists exclusively of foreign commerce, inter-state commerce or both." Appellant contends that it complies with that statute.

The question is whether the commissioner was correct in determining that the Appellant was taxable under Minn. Stat. § 290.02. That statute read as follows for the taxable years at issue herein:

290.02 EXCISE TAX ON CORPORATIONS; IMPOSITION, MEASUREMENT. *An annual excise tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.*

The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter. (Emphasis added.)

The Appellant clearly meets all the requirements for taxation under this statute. It is indisputably a domestic corporation which not only exists under the laws of Minnesota, but actively exercised its privilege of existence through the conduct of its brokerage business in this state during the taxable years in issue.

Appellant maintained its Minnesota offices at 109 Grain Exchange Building in Minneapolis, where it employed six or seven people, including brokers, three of the firms officers (one of whom is also a broker), and support staff.

During the years in question, Appellant also maintained a bank account for the investment of its excess funds at the Midland National Bank of Minneapolis, Minnesota. Furthermore, Appellant bought and sold some of its United States securities entirely within Minnesota through the Midland National Bank, where the securities were also held for safekeeping.

Finally, but not unimportantly, it is quite obvious that Appellant's business at its Minneapolis office consists in large part of the receipt and acceptance of orders from Minnesota customers to buy or sell futures. These transactions do not take place on any exchange floor, but rather in or through the privacy of Appellant's Minneapolis office. These transactions are solely between Appellant and its own customers. As such, they take place totally within the State of Minnesota.

These facts clearly establish that Appellant is subject to the normal excise tax on domestic corporations imposed by Minn. Stat. § 290.02. Therefore, its interest income from United States securities is not tax exempt. The facts and the law in this case clearly show that Appellant's business operations do not come within the meaning of that statute's language requiring its business within Minnesota to consist "exclusively" of foreign or inter-state commerce.

Minn. Stat. § 290.03 reads in relevant part as follows:

290.03 INCOME TAX; IMPOSITION, CLASSES OF TAXPAYERS. An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(1) *Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both;*

Business within the state shall not be deemed to include transportation in interstate or foreign commerce, or both, by means of ships navigating within or through waters which are made international for navigation purposes by any treaty or agreement to which the United States is a party; (Emphasis added.)

There is no Minnesota case law on the meaning of the phrase "consists exclusively of foreign commerce, interstate commerce, or both" as used in this statute. However, the applicable Income Tax Regulations do set forth helpful guidelines as to the application of Minn. Stat. § 290.03, especially as it relates to the normal excise tax on corporations imposed by Minn. Stat. § 290.02. Regulation 2002 reads in relevant part as follows:

The tax imposed by M.S.A. 290.02 is an excise or privilege tax measured for any given taxable year by the corporation's taxable net income for such year. The tax in the case of a domestic corporation is for the privilege of existing as a corporation during any part of a taxable year. . . . A domestic corporation is taxable under the provisions of M.S.A. 290.03 if its business within this State consists exclusively of interstate or foreign commerce or of both. *Any corporation, foreign or domestic, whose business is partly interstate or foreign is subject to the excise tax, even though the predominant part of its business is not local.* (Emphasis added.)

This regulation, duly promulgated many years ago pursuant to Minn. Stat. § 290.52, makes it clear that if *any* part of a domestic corporation's business is local, it is subject to the excise tax imposed by § 290.02, rather than the net income tax imposed by § 290.03. In other words, even if it were assumed *arguendo* that a predominant part of a domestic corporation's business was interstate, this would still not meet the statutory requirement of "exclusively" interstate commerce.

In the case at hand, there is strong authority for the proposition that a corporation engaged in a business such as Appellant's, is in fact engaging in intrastate business, even though its business may also be considered to affect interstate commerce enough to give Congress the authority to regulate it under the Commerce Clause.

Federal regulation does not preclude state taxation and state taxation does not preclude federal regulation. *Polish National Alliance vs. N.L.R.B.*, 322 U.S. 643, 649, 64 S.Ct. 1196, 1199.

In another case, both the Minnesota Supreme Court and the United States Supreme Court held that the business of a custom-house broker, licensed and regulated by the federal government for the purpose of easing the flow of foreign commerce across the Minnesota-Canadian border, was nevertheless sufficiently localized in nature to subject it to the provisions of Minnesota's Foreign Corporation Act. *Union Brokerage Co. v. Jensen*, 215 Minn. 207, 9 N.W. 2d 721 (1943); *aff'd* in 322 U.S. 202, 64 S. Ct. 967 (1944). In the U.S. Supreme Court's opinion, 322 U.S. at 210, 64 S. Ct. at 972-973, it was said:

But, as we have noted, while the business of Union is that of a customhouse broker, its activities are not confined to its services at the port of entry. *It has localized its business, and to function effectively it must have a wide variety of dealings with the people in the community.* The same considerations that justify the particular regulatory measure alone before us, namely the requirement of a certificate of authority in the case of foreign corporations carrying on business other than customhouse brokerage, apply to the carrying on of Union's business in Minnesota. The burden, such as it is, falls on foreign businesses *that commingle with Minnesota people.* (Emphasis added.)

TAX COURT

The same can be said of Appellant in the case at hand. Despite the fact that it is regulated by the federal government, Appellant has also localized its business through a wide variety of dealings with the people of Minnesota. These include its receipt and acceptance of customer orders at its Minneapolis office. They also include its maintenance of a bank account and other banking connections here, and mainly its maintenance of an office here in which three of the corporate officers are headquartered. All of these facts, together with its purchase and sale of U.S. securities entirely through a Minnesota bank with no part of the transactions being conducted over interstate lines, make it clear that at least a part of Appellant's business has been localized in Minnesota. Thus, its business within Minnesota does not consist "exclusively" of interstate commerce.

Appellant's citation of *City of Waseca v. Braun*, 206 Minn. 154, 288 N.W. 229 (1939), and several federal cases defining interstate commerce, are irrelevant. No one has denied that Appellant's business does in some measure affect interstate commerce. But this is not the test. Unless Appellant can show that it has no local business whatsoever in Minnesota, and that its business within this state is "exclusively" interstate, then it is subject to the normal excise tax on domestic corporations imposed by Minn. Stat. § 290.02.

Appellant's strong reliance upon the extensive federal regulation of the commodities futures business is likewise irrelevant. It is axiomatic that mere regulation of a business by the federal government under the Commerce Power, however pervasive, has little or no bearing upon the question of state taxation of that business. *Braniff Airways v. Nebraska State Board of Equalization and Assessment*, 347 U.S. 590, 594-597, 74 S. Ct. 757, 760-762 (1954).

This rule was highlighted in the case of *Katzenbach v. McClung*, 379 U.S. 294, 85 S. Ct. 377 (1964), where the U.S. Supreme Court, in upholding the regulatory power of Congress to enact the Civil Rights Act of 1964, rejected as inapposite the citation of Commerce Clause cases dealing with state taxation. In 379 U.S. at p. 302, the Court said:

Nor are the cases holding that interstate commerce ends when goods come to rest in the State of destination apposite here. That line of cases has been applied with reference to state taxation or regulation but not in the field of federal regulation.

It is quite obvious that the definition of interstate commerce found in the Commodity Exchange Act, 7 U.S.C. § 2, is not controlling in the instant case simply because it does not define what is "exclusive" interstate commerce for purposes of state taxation. In any event, the legislative history of the Commodity Futures Trading Commission Act of 1974 reiterates the fundamental purpose of the regulatory acts:

"... insuring fair practice and honest dealing on the commodity exchanges and providing a measure of control over those forms of speculative activity which often demoralize the markets to the injury of producers, consumers, and the exchanges themselves." 1974 U.S. Code Congressional and Administrative News, p. 5844.

No portion of the federal act is intended to affect areas outside the scope of this statement of purpose. Thus, the federal preemption of regulation of this particular market does not also mean it preempts all state law that might apply to participants in the market. *Poplar Grove Planting and Refining Co., Inc. v. Bache Halsey Stuart Inc.*, 465 F. Supp. 585 (M.D. La., 1979).

Appellant cites two Minnesota cases, *Owens-Illinois Glass Company v. Commissioner of Taxation*, Dkt. No. 196 (Sept. 24, 1946); and *State v. Northwestern States Portland Cement Co.*, 250 Minn. 32, 84 N.W. 2d 373 (1957), aff'd in 358 U.S. 450, 79 S. Ct. 357 (1959), as "solid legal precedent" that Appellant too should be held a business engaged exclusively in interstate commerce. However, both of those cases are readily distinguishable from the instant case.

In both *Owens-Illinois* and *Portland Cement*, the taxpayers were foreign corporations who had never qualified to do business within Minnesota. Appellant, on the other hand, is a domestic Minnesota corporation which, by reason of that fact, has always had and exercised the privilege of doing business within this state. In fact, from the date of its incorporation in 1928, until sometime in the 1960's, Appellant's sole offices were located in Minnesota.

But the most important distinguishing factor between these cases is that in both *Owens-Illinois* and *Portland Cement* the question of whether the taxpayer involved was engaged exclusively in interstate commerce was obviously conceded for the sole purpose of being able to proceed unhindered with the more important constitutional issues raised in those cases. Undoubtedly, one reason for this concession by the Commissioner was the very practical difficulty of establishing an intrastate business when neither the Owens-Illinois Glass Co., nor Northwestern States Portland Cement had even qualified to do business in Minnesota.

Another reason, quite evident in the *Portland Cement* case, was that the commissioner simply wanted to test the constitutional validity of Minn. Stat. § 290.03, as it applied to foreign corporations. Obviously, the commissioner could not do so if he sought to tax Northwestern States Co. under the excise tax provisions of Minn. Stat. § 290.02. This circumstance was noted by Justice Whittaker in his dissent to the opinion of the U.S. Supreme Court in *Portland Cement*. In 358 U.S. at 483-484, 79 S. Ct. at 371-372, Justice Whittaker reviewed the evidence in the case and said:

These recitals, if found true, might very well have supported a finding, had there been one, that the taxpayer was engaged in intrastate commerce in Minnesota. Particularly might the statement about the salesmen taking orders from builders, contractors and architects for local dealers have done so, for it was expressly held in *Cheney Brothers Co. v. Commonwealth of*

Massachusetts, 246 U.S. 147, 155, 38 S. Ct. 295, 297, 62 L.Ed. 632, that such conduct amounted to engaging in the local business of selling products for such dealers. But no such finding was made by the Minnesota courts. *And there is more than colorable basis for believing that Minnesota did not desire such a finding, as any such practice could easily be ended by Northwestern, and Minnesota's purpose was not to rest on such a basis but to obtain an adjudication that its statute, § 290.03, constitutionally imposed a tax upon the taxpayer's net income from Minnesota customers though derived "exclusively [from] interstate commerce."*

The above points make it perfectly clear that neither *Owens-Illinois* nor *Portland Cement* amount to the "solid legal precedent" for which Appellant argues. In neither case was the question of what constitutes "exclusively" interstate commerce, within the meaning of Minn. Stat. § 290.03, actually litigated. It was simply conceded by all parties. Furthermore, the commissioner's allegedly inconsistent position as between those two cases and the one at hand is readily explainable upon the basis of different facts and different legal issues involved. In summary, *Owens-Illinois* and *Portland Cement* are of no help to the Appellant herein.

SUPREME COURT

Decisions Filed Friday, May 1, 1981

Compiled by John McCarthy, Clerk

49946/268 (1980) State of Minnesota v. Christopher Jessie Linder, Appellant. Anoka County.

The trial court did not abuse its discretion in denying defendant's motion to waive jury trial under Minn. R. Crim. P. 26.01, subd. 1 (2).

The totality of the circumstances supports the jury verdict of first-degree murder.

The evidence did not mandate a verdict of not guilty by reason of mental illness.

Affirmed. Peterson, J. Dissenting, Otis and Wahl, JJ.

51161/8, 51287 James Grassman, d.b.a. First Barber Stylists, et al. v. Minnesota Board of Barber Examiners, et al., Defendants, Albert Quie, as Governor of the State of Minnesota, Appellant, Allied Barbers Legislative Committee, Inc., Intervenor. Ramsey County.

The statute regarding the number of apprentice barbers and various regulations imposed on barbers but not cosmetologists are an unconstitutional denial of equal protection because similarly situated groups are not similarly regulated.

The establishment of trade areas, the mechanisms utilized to effectuate the invalid regulations, constitutes a denial of equal protection.

The trial court's denial of respondents' request for attorneys fees is appropriate under the facts of this case.

Affirmed in part; reversed in part. Todd, J. Took no part, Scott, J.

51234/Sp. State of Minnesota v. Earl Leon Owens, Appellant. Clay County.

Evidence of defendant's guilt of burglary and criminal sexual conduct in the first degree was sufficient.

Trial court did not prejudicially err in (a) refusing to admit evidence of other sexual conduct by the complainant, or (b) refusing to specifically instruct the jury that a complainant's failure to immediately complain was relevant to the issue of whether rape had occurred.

Where our examination of the record clearly reveals that defendant was never formally adjudicated guilty of two offenses, we need not decide the hypothetical issue of the applicability of Minn. Stat. § 609.04 (1980).

Affirmed. Todd, J.

51142/371 (1980) Russell Nelson v. State of Minnesota, Department of Natural Resources, Relator. Workers' Compensation Court of Appeals.

A petitioner's failure to provide notice of a petition to distribute the proceeds of a wrongful death action to an employer with a subrogation interest to protect will invalidate the distribution obtained.

Minn. Stat. § 176.061, subd. 8 (1980) distinguishes between employees of the state and all other employees and in so doing sets out a classification that does not apply uniformly to a similarly situated group, employees; is not supported by genuine and substantial distinctions between employees of the state and other employees; does not further the purposes of the Workers'

SUPREME COURT

Compensation Act, Minn. Stat. § 176.011 *et seq.* (1980) and therefore violates respondent's right to equal protection under the laws. U.S. Const. amend. XIV.

Appeal stayed and matter remanded to Aitkin County District Court for supplemental proceedings. Amdahl, J. Took no part, Sheran, C.J.

51342/12 Jane Resident, by her Guardian Ad Litem v. Arthur E. Noot, individually and as Commissioner of the Department of Public Welfare, Appellant. Hennepin County.

DPW Rule 47(F) (1) does not prohibit a nursing home from accepting third-party payments for non-medical assistance covered items on behalf of a Medical Assistance recipient. 12 MCAR § 2.047(F) (1) (1978).

Payments made by a non-financially responsible relative to secure a medically unnecessary private room for a Medical Assistance recipient residing in a nursing home are not income to the recipient because they are third party payments for medical care or services and therefore not considered in the determination of income.

Affirmed. Amdahl, J. Took no part, Scott, J.

50785/Sp. St. Croix Engineering Corp., Appellant v. Mary Jo McLay, as Personal Representative of the Estate of Gerald M. McLay. Ramsey County.

The trial court did not err in striking as hearsay all testimony regarding conversations with the decedent.

The evidence was sufficient to support the trial court's finding that the decedent signed the checks in a representative capacity.

Affirmed. Simonett, J.

Opinion Filed April 28, 1981

81-330/Sp. State of Minnesota, Appellant v. Terrence Jon Veigel. Nicollet County.

Warrantless search of locked glove compartment of motor vehicle was valid under motor vehicle exception to the warrant requirement where officer conducting search had probable cause to believe there were controlled substances in vehicle.

Reversed and remanded. Sheran, C.J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Security Balance of State Private Industry Council

Notice of Request for Proposals for an Occupations Brokerage Service for Businesses and Organizations in Rural Minnesota

The Minnesota Balance of State Private Industry Council wishes to announce the solicitation of proposals to operate an occupations brokerage service linking businesses' needs for trained manpower to appropriate training providers.

The contact person is:

Patrick J. Cruik
PIC Coordinator
Minnesota Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

The last date that proposals will be accepted is May 26, 1981. The estimated cost for the service is \$40,000.

Department of Economic Development Development Resources Division

Notice of Request for Proposals for A Feasibility Study of the Suitability of Two Sites within Fergus Falls to Be Used as Industrial Parks

The study will determine the best and most cost effective way to develop each site, estimates of development costs, and the ability of each site to meet the needs of each of the following types of industries: (1) a meat processing/packing plant, (2) an ethanol plant, and (3) a furniture manufacturing plant. As an additional spin-off the study will provide information on the suitability of the proposed sites for other types of industry.

Copies of the Request for Proposal are available by writing or calling:

Mr. Warren Kapsner
Minnesota Department of Economic Development
480 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3591

Proposals must be submitted no later than 4:00 p.m., June 1, 1981. The department has estimated that the cost of this project should not exceed \$23,000 for professional services and expenses.

Energy Agency Conservation Division

Notice of Request for Proposals for an Assessment of the Impacts of Load Management and Energy Conservation on the Need for Sherburne County Generating Unit No. 3 Applied for by the Northern States Power Company and Other Utilities

The Minnesota Energy Agency is issuing a request for proposal (RFP) for performing an impacts assessment intended to provide information and guidance to the agency intervening staff so that the staff is able to arrive at an objective reevaluation of the need for Sherburne County Generating Unit No. 3.

The RFP may be obtained between May 12 and June 5, 1981, from:

Jesus C. Dumagan
Minnesota Energy Agency
980 American Center Building
150 E. Kellogg Blvd.
St. Paul, Minnesota 55101
Telephone: (612) 296-1000

The deadline for receipt of proposals is June 5, 1981, 4:30 p.m. The amount of funds for this effort is \$20,000.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, Bremer Tower, 5th Floor, 7th Place and Minnesota Street, St. Paul, MN 55101.

Department of Public Service Utilities Division

Notice of Request for Proposal for Rate Design Related Services

The Minnesota Department of Public Service (department) is soliciting proposals from qualified consultants to assist it in meeting its obligations to consider and make determinations concerning three of the six ratemaking standards of the Public Utility Regulatory Policies Act (PURPA). Specifically, the department is seeking assistance in meeting these obligations under PURPA with respect to Otter Tail Power Company (OTP) in the context of a general rate case proceeding.

The consultant will be expected to perform the following tasks:

STATE CONTRACTS

A. Prepare a detailed and comprehensive analysis of OTP's marginal costs of service. (See the cost of service standard of PURPA, Title I, Subtitle B, Sections 111 and 115.) This marginal cost of service analysis will be conducted using the so-called National Economic Research Associates (NERA) methodology and will be essentially an update and refinement of the marginal cost analysis which was begun by the Department in OTP's previous rate proceeding.

Based on the results of this marginal cost analysis, the consultant will be expected to provide the following:

B. A set of time-of-day rates for OTP's Large General Service class and the demand metered portion of the General Service class, or an analysis demonstrating that such rates are not cost-effective. That is, the long-run benefits of such rates to OTP and its customers are not likely to exceed the metering costs and other costs associated with the use of such rates. (See the time-of-day rate standard of PURPA, Title I, Subtitle B, Section 111 and 115.)

C. A set of seasonal rates for each class of service which reflect the costs of such service, or an analysis which shows that OTP's cost structure does not justify such rates. (See the seasonal rate standard of PURPA, Title I, Subtitle B, Section 111.)

As a member of the department's staff participating in this proceeding, the consultant will be expected to perform the following additional tasks:

D. Develop and prepare all information (data) requests which are necessary in order to fully discover and develop the issues related to the cost of service and rate design work described above.

E. Assist, as may be necessary, the department counsel in the preparation of cross-examination of company and intervenor witnesses on the marginal cost of service and time-of-use rate design issues described above.

F. Develop and deliver direct, and as may be necessary, rebuttal and surrebuttal testimony on the marginal cost of service and time-of-use rate design issues described above.

It is also an objective of this project to make use of the consultant's experience and expertise to aid in the training of department staff. The department is interested in developing the skills of its staff in conducting marginal cost studies, developing rates therefrom, and conducting cost-benefit analysis of new rate proposals. To this end the consultant will be expected to perform the following:

G. Work closely with designated members of the department staff in all stages of the project including but not necessarily limited to the following:

1. Gathering of all the required information and data from OTP and other sources.
2. Preparing and analyzing the required information and data.
3. Developing and preparing the marginal cost study.
4. Developing and preparing rate proposals.
5. Developing and preparing any associated cost-benefit analysis.

H. Provide the department with a copy of all working papers prepared by the consultant in connection with completing these tasks, and an accompanying written work plan for conducting marginal cost studies, developing rate structures and evaluating the costs and benefits of new rate proposals. The work plan should be sufficiently comprehensive and detailed to enable department staff to perform these tasks in the future.

The estimated cost of this contract is \$25,000.

The due date for proposals is June 1, 1981.

Direct inquiries to:

Phillip J. Zins
Supervisor of Electric and Gas Rate Design
Minnesota Department of Public Service
160 East Kellogg Boulevard
St. Paul, Minnesota 55101
(612) 296-7531

Department of Public Welfare Anoka State Hospital

Notice of Request for Proposals for Medical Services

Notice is hereby given that the Anoka State Hospital, Mental Health Division, Department of Public Welfare, is seeking the

following services for the period July 1, 1981 through June 30, 1982. These services are to be performed as requested by the Administration of the Anoka State Hospital.

1) Services for psychiatric services. Responsibilities will include attendance at Medical Staff meetings, participation in the Utilization Review program, appearances at Special Review Board hearings, probate court hearings off campus, and in-service education. The number of hours of psychiatric services will not exceed 95 each month. The estimated amount of contracts will not exceed \$57,500.

2) Services of an organization to perform diagnostic laboratory procedures as requested by Anoka State Hospital personnel, provide consultant and education seminars and technical coverage designated to meet laboratory diagnostic requirements of Anoka State Hospital personnel and to perform admission profiles on each patient unless otherwise stated. The estimated amount of the contract will not exceed \$73,000.

3) Services of a radiologist to work approximately 36 hours per month to interpret and dictate x-rays, do fluoroscopy examinations, and consult with medical staff regarding problem patients. Consultant will not inject radiopaque dyes as part of the procedure. The estimated amount of the contract will not exceed \$16,000.

4) Services of a qualified anesthesiologist to administer anesthesia to Anoka State Hospital patients in conjunction with electroconvulsive therapy. Consultant will average approximately two visits/week. Amount of the contract will not exceed \$10,500 annually.

Responses for the above services must be received by June 1, 1981. Direct inquiries to:

Jonathan A. Balk, Chief Executive Officer
Anoka State Hospital
Anoka, MN 55303
(612) 421-3940

Department of Transportation St. Cloud Engineering Department

Notice of Availability of Contract for Bridge Replacement Final Design Engineering

The City of St. Cloud, Minnesota, in cooperation with the Office of State Aid, Minnesota Department of Transportation, requires the services of a qualified consultant to provide final design engineering for the replacement of the 10th Street Bridge in the City of St. Cloud, Minnesota over the Mississippi River.

The services shall consist of providing final design plans, local design hearing, state and federal approval, and necessary permits for construction.

Firms desiring consideration should submit their federal forms 254 and 255 within 14 days. This is not a request for a proposal.

Please send your response to:

John L. Dolentz
City Engineer
City Hall
St. Cloud, MN 56301
Telephone: (612) 251-5541

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Administration Data Privacy Division

Notice of Intent to Consider An Application for Temporary Classification for Statewide Applicability

The Commissioner of Administration has received an application for temporary classification of data on income properties, submitted by the City of Minneapolis, Minnesota. The commissioner has determined that it is advisable to consider this application for statewide applicability under the authority vested in him by Minnesota Statutes, Section 15.1642 as amended by Chapter 603, Laws of Minnesota, 1980. The commissioner hereby gives notice of his intent to approve or disapprove, for the use of all political subdivisions in the State of Minnesota, a private classification of data for the following types of data on income properties which are collected from individuals by assessors:

1. Detailed income/expense figures for current year plus previous three years.
2. Average vacancy factors for the prior three years.
3. Verified net rentable areas or net usable areas, whichever is appropriate.
4. Anticipated current income/expenses.
5. Current projected vacancy factor.

Any city, county, other government agency, association or member of the public who wishes to submit comments on this application must do so within 30 days of the publication of this notice. Comments received after 30 days need not be considered by the commissioner. Comments should be submitted to the Commissioner of Administration, c/o Data Privacy Division, 200 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota, 55155. A copy of the application may also be obtained from the Data Privacy Division.

Department of Commerce Board of Architecture, Engineering, Land Surveying and Landscape Architecture

Notice of Meeting

The board will hold its Annual Meeting at 9:00 a.m., Friday, May 15, 1981 in Hearing Room A, 5th Floor Metro Square, Saint Paul, Minnesota. The purpose of the meeting is to elect board officers, orient new members, receive section reports and to review proposed rules for adoption without public hearing. A copy of the meeting agenda may be obtained from the board office by calling (612) 296-2388.

Department of Commerce Banking Division

Bulletin No. 2389: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of May, 1981

Notice is hereby given that pursuant to § 47.20, subd. 4a, Minnesota Statutes, the maximum lawful rate of interest for conventional home mortgages for the month of May, 1981, is fifteen and three-quarters (15.75) percentage points.

Further, pursuant to Senate File No. 273, Chapter 373, 1980 Session Laws, as it amended § 47.20, Minnesota Statutes, the

maximum lawful rate of interest for contracts for deed for the month of May, 1981, is fifteen and three-quarters (15.75) percentage points.

April 29, 1981

Michael J. Pint
Commissioner of Banks

Department of Commerce Insurance Division

Petition by the Workers' Compensation Insurers Rating Association of Minnesota for Changes in the Basic Manual for Workers' Compensation and Employers' Liability Insurance

Notice of and Order for Hearing

On November 28, 1980 and April 13, 1981, the Workers' Compensation Insurers Rating Association of Minnesota (hereinafter "WCIRA") filed petitions to amend the Basic Manual and the Unit Statistical Plan Manual for Workers' Compensation and Employers' Liability Insurance (hereinafter "manual"). The manual contains rules governing the issuing, underwriting, classification, and auditing of workers' compensation risks and policies within the state of Minnesota.

The proposed amendments to the manual, as alleged in the petitions of the WCIRA, would make changes in the Basic Manual clarifying the interpretation and definitions given to Manual classification codes relating to commuter air carriers, burglar and fire alarm, inter-communication and sound system installation and repair, overhead door installation, explosives distributors, beverage container recyclers, pile driving, supermarkets, boarding kennels, airport security screening, and steel framing. The classification change would amend the following classification codes: 3724, 4777, 5102, 5403, 5445, 5606, 5645, 6003, 7403, 7405, 7422, 7423, 7431, 7600, 7605, 7720, 8017, 8018, 8033, 8264, and 8831. In addition, the proposed amendments to the manual would change the pension tables in the Unit Statistical Plan Manual; require each risk to report WCIRA file number as part of their reporting pursuant to the Unit Statistical Plan Manual; eliminate certain "A" rate classifications; change the payroll limitation for executive officers, sole-proprietors and partners; change the inclusion/exclusion endorsements for executive officers, sole-proprietors and partners; and change the reporting requirements in retrospective rating plans.

The petitions for hearing sets forth sufficient facts and information indicating the need for amendment to the manual.

It is hereby ordered that pursuant to Minn. Stat. §§ 79.076 subd. 2(2), 79.071 and 79.072, a hearing shall be held to consider the facts and issues raised by the petition for hearing of WCIRA. The hearing shall be conducted before Hearing Examiner Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-5938, a hearing examiner duly appointed by the Chief Hearing Examiner of the State of Minnesota.

The hearing in this matter will be held for the purpose of providing the Petitioner WCIRA with an opportunity to present evidence in support of the amendments to the Basic Manual requested in its Petition. The hearing will be conducted as a contested case hearing according to the procedures set forth in Minn. Stat. §§ 15.0411-15.052, 79.076, subd. 2(2), 79.071, 79.072 and pursuant to the Rules of Contested Case Procedures adopted by the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.299.

Throughout the proceedings in this matter, interested parties may be represented by legal counsel or by a person or representative of their choice, if not otherwise prohibited as the unauthorized practice of law. Questions concerning the hearing should be directed to the hearing examiner. Questions concerning this order, concerning discovery or concerning an informal disposition of this matter may be directed to the hearing examiner or to Alberto Quintella, 1100 Bremer Tower, 7th and Minnesota Street, St. Paul, Minnesota 55101, telephone (612) 296-9412.

Notice is hereby given that a prehearing conference will be held at 9:00 a.m. on the 25th day of June, 1981, at 500 Metro Square Building, 7th and Robert Street, St. Paul, Minnesota before the hearing examiner. This prehearing conference will be held for the purpose of establishing a hearing date for this matter, and to consider any pretrial motions properly raised before the hearing examiner regarding discovery, witnesses, or intervention or parties pursuant to the rules of the Office of Administrative Hearings (9 MCAR § 2.213) which rules govern prehearing procedures.

Any person or organization who intends to appear at the hearing must file a Notice of Appearance with the hearing examiner within 20 days of the publication of service of this Notice and Order for Hearing. If no person or organization contests the proposals or the petition, they may be deemed true. In the event the proposals are taken as true or the issues are deemed proven, it is possible that the proposed amendments to the manual requested by the WCIRA will be granted.

OFFICIAL NOTICES

Copies of the proposed amendments to the manual may be obtained from the Workers' Compensation Insurers Rating Association of Minnesota, 510 Marquette Avenue, Minneapolis, Minnesota 55402, telephone (612) 338-4500. In addition, copies may be inspected during regular business hours at the Minnesota Insurance Division, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101, telephone (612) 296-2488.

Michael D. Markman
Commissioner of Insurance

Energy Agency Data and Analysis Division

Notice of Intent to Solicit Outside Opinion Regarding Rules on Annual Electric Utility Information Reported Annually

Notice is hereby given that the Minnesota Energy Agency (hereinafter the "agency") is extending the deadline from January 15, 1981 to May 22, 1981 for the submission of statements and comments from sources outside the agency regarding the amending of rules governing the contents of the annual report and forecast submitted by electric utilities.

The original Notice of Intent to Solicit Outside Opinion was published in the September 22, 1980 issue of the *State Register* at 5 S.R. 471.

May 4, 1981

Dan Quillin
Energy Specialist Intermediate

Office of the Secretary of State Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155; (612) 296-7876. Application deadline is June 2, 1981.

HUMAN RIGHTS ADVISORY COMMITTEE has one vacancy open for a professional member in congressional district 5. The committee advises the Commissioner of Human Rights; recommends programs and policies. Members are appointed by the Governor. Monthly meetings; members receive \$35 per diem. For specific information contact Human Rights Advisory Committee, 240 Bremer Bldg., St. Paul 55101; (612) 296-5676.

ADVISORY TASK FORCE ON AMERICAN INDIAN LANGUAGE AND CULTURE EDUCATION PROGRAMS has 10 vacancies open for members. The task force advises the Board of Education in the administration of the American Indian Language and Culture Education Act; reviews proposals and makes recommendations to the board on approval and funding of bicultural programs in Minnesota schools. Members are appointed by the Board of Education; include representatives of the Minnesota Sioux Tribe, the Minnesota Red Lake Tribe, the Minnesota Chippewa Tribe, the metropolitan areas of Duluth, Mpls., and St. Paul, and a member representing Indian Alternative Schools. Members include representatives of community groups, parents of children eligible to be served by the programs, American Indian administrators and teachers, and persons knowledgeable in the field of American Indian language and culture education. Between 6 and 10 meetings per year at various sites statewide; members are reimbursed for expenses. For specific information contact Advisory Task Force on American Indian Language and Culture Education Programs, 303 Capitol Square Bldg., St. Paul 55101; (612) 296-6458.

INDIAN SCHOLARSHIP COMMITTEE has 14 vacancies open for members. The committee advises the Board of Education on amounts and types of scholarships granted to American Indian post-secondary students. Members are appointed by the Board of Education; include representatives of the Duluth area, the Minneapolis area, the Bemidji area, the Bureau of Indian Affairs Higher Education Office, the Minnesota Chippewa tribe, the Minnesota Sioux tribe, and the Red Lake education division. Members are compensated for expenses. For specific information contact Indian Scholarship Committee, 1705 U.S. Highway 2 W., Bemidji 56601; (218) 755-2926.

Board of Teaching

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule Governing the Licensure of Teachers of Business and Office Education

Notice is hereby given that the Minnesota Board of Teaching is considering adopting and/or amending a rule governing the licensure of Teachers of Business and Office Education.

The proposed rule is authorized by Minnesota Statutes § 125.05, subd. 1 and § 125.185, subd. 4 (1980), which authorizes the board to establish reasonable standards for the licensure of teachers. The proposed rule would establish reasonable standards and procedures related to the issuance of the licenses to teach in the State of Minnesota.

All interested or affected persons or groups may submit information related to the above cited rule. Written or oral information and comment should be addressed to:

Kenneth L. Peatross, Executive Secretary
Minnesota Board of Teaching
608 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2415

Department of Transportation

Allocation of Funds from the State Highway Safety Services Appropriation for the Installation of Passive Advance Warning Signs in Minnesota along the Chicago and North Western Transportation Company (C&NW) Mainline from Norwood to Madison, Minnesota

Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given, that a contested case hearing concerning the above-entitled matter will be held on June 11, 1981 at 1:00 P.M. in the District Court, Redwood County Court House, Redwood Falls, Minnesota.

The hearing will be held before Mr. Richard DeLong, 1745 University Avenue, Saint Paul, Minnesota 55104 (Telephone: 612-296-8117) a hearing examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minnesota Statutes § 15.0411 through Minnesota Statutes § 15.052 and 9 MCAR § 2.201 through § 2.222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Mr. Robert G. Swanson, Manager, 419 Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2472).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. §§ 219.14, 219.17 and 219.26 all parties and potential parties of interest are given an opportunity to be heard on the proposed allocation of funds from the State Highway Safety Devices Appropriation pursuant to Minnesota Statutes § 219.40 and Laws of Minnesota 1979, Extra Session, Chapter 1, Section 3, Highway Safety Improvement. Said funds will be used in conjunction with assistance available to the State of Minnesota under the Surface Transportation Assistance Act of 1978 (Public Law 95-999) to erect and install passive advance warning signs in Minnesota along the Chicago and North Western Transportation Company mainline from Norwood, Minnesota to Madison, Minnesota.

Any person who desires to become a party to this matter must submit a timely **Petition to Intervene** to the hearing examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought.

All parties are advised that if a party intends to appear at the hearing scheduled for June 11, 1981 the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a party fail to appear at the hearing, the allegations made in the petition may be taken as true.

The above cited procedural rules are available at the Office of Administrative Hearings or may be purchased from the Documents Section of the Department of Administration, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155 (Telephone: 612-297-3000). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to

OFFICIAL NOTICES

purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents. If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

Dated this 5th day of May 1981.

Richard P. Braun
Commissioner

CNW
Norwood To Madison

D - 5107
R - 3808

<u>County</u>	<u>State Crossing No.</u>	<u>Federal Crossing No.</u>	<u>Road Authority</u>	<u>State Road Designation</u>
Carver	10-02-35	184-669F	Young America Twp.	Twp. 169
	10-02-37	184-672N	Young America Twp.	Twp. 6
Sibley	72-02-01	184-673V	Washington Lake Twp.	Twp. 150
	72-02-02	184-674C	Washington Lake Twp.	Twp. 152
	72-02-03	184-675J	Washington Lake Twp.	Twp. 120
	72-02-07	184-680F	County of Sibley	CSAH 11
	72-02-08	184-681M	Green Isle Twp.	Twp. 159
	72-02-09	184-682U	Green Isle Twp.	Twp. 106
	72-02-10	184-683B	Green Isle Twp.	Twp. 169
	72-02-11	184-684H	Arlington Twp.	Twp. 103
	72-02-12	184-686W	Arlington Twp.	Twp. 170
	72-02-14	184-691T	City of Arlington	4th Ave. E.
	72-02-17	184-694N	City of Arlington	Adams St.
	72-02-19	184-696C	County of Sibley	CSAH 9
	72-02-20	184-701W	Arlington Twp.	Twp. 93
	72-02-21	184-702D	Arlington Twp.	Twp. 90
	72-02-24	184-712J	Dryden Twp.	Twp. 315
	72-02-25	184-713R	City of Gaylord	E. Corp. Limits
	72-02-26	184-715E	City of Gaylord	2nd St.
	72-02-28	184-719G	Dryden Twp.	Twp. 61
	72-02-30	184-724D	Transit Twp.	Twp. 7
	72-02-33	184-731N	City of Winthrop	Renville St.
	72-02-34	184-734J	City of Winthrop	Brown St.
	72-02-35	184-735R	Cornish Twp.	Twp. 45
	72-02-37	184-737E	Cornish Twp.	Twp. 35
	72-02-39	184-739T	Cornish Twp.	Twp. 277
	72-02-39A	184-740M	City of Gibbon	Ely Ave. E.
	72-02-42	184-750T	Severance Twp.	Twp. 15
	72-02-42A	184-752G	Severance Twp.	Twp. Road
	72-02-43	184-754V	Severance Twp.	Twp. 275
Renville	65-02-103	184-760Y	Cairo Twp.	Twp. 244
	65-02-104	184-761F	County of Renville	C.R. 76
	65-02-106	184-766P	City of Fairfax	4th St.
	65-02-107	184-767W	County of Renville	CSAH 28
	65-02-109	184-770E	City of Fairfax	W. Corp. Limits
	65-02-111	184-772T	Camp Twp.	Twp. 224
	65-02-113	184-775N	Camp Twp.	Twp. 223
	65-02-115	184-781S	Camp Twp.	Twp. 215

<u>County</u>	<u>State Crossing No.</u>	<u>Federal Crossing No.</u>	<u>Road Authority</u>	<u>State Road Designation</u>
Redwood	65-02-117	184-784M	City of Franklin	City St.
	65-02-118	184-785U	County of Renville	CSAH 29
	65-02-120	184-786B	County of Renville	CSAH 105
	65-02-121	184-787H	County of Renville	C.R. 51
	65-02-122	184-791X	City of Morton	2nd Ave.
	65-02-123	184-792E	County of Renville	C.R. 80
	64-02-92	184-798V	City of N. Redwood	City St.
	64-02-93	184-799C	City of N. Redwood	N.W. Corp. Limits
	64-02-93C	184-800U	County of Redwood	CSAH 25
	64-02-94	184-801B	Delhi Twp.	Twp. 40
	64-02-95	184-802H	County of Redwood	CSAH 17
	64-02-96	184-803P	Delhi Twp.	Twp. 219
	64-02-97	184-804W	City of Delhi	East St.
	64-02-98	184-805D	County of Redwood	CSAH 6
	64-02-99	184-806K	County of Redwood	CSAH 9
	64-02-99A	184-807S	Delhi Twp.	Twp. 207
	64-02-100	184-808Y	Delhi Twp.	Twp. 206
	64-02-102	184-810A	County of Redwood	CSAH 19
	64-02-103	184-811G	Kintire Twp.	Twp. 197
Yellow Medicine	87-02-01	184-813V	County of Yellow Medicine	C.R. 1A
	87-02-02	184-814C	County of Yellow Medicine	CSAH 1
	87-02-03	184-815J	County of Yellow Medicine	CSAH 20
	87-02-05	184-816R	City of Echo	3rd St.
	87-02-06	184-817X	City of Echo	4th St.
	87-02-08	184-819L	Echo Twp.	Twp. 125
	87-02-09	184-820F	Echo Twp.	Twp. 123
	87-02-10	184-822U	County of Yellow Medicine	C.R. 5A
	87-02-11	184-823B	County of Yellow Medicine	C.R. 6A
	87-02-14	184-827D	City of Wood Lake	Railroad Ave.
	87-02-17	184-832A	Wood Lake Twp.	Twp. 1
	87-02-23	185-257W	Sandnes Twp.	Twp. 161
	87-02-24	185-258D	Sandnes Twp.	Twp. 94
	87-02-25	185-259K	County of Yellow Medicine	CSAH 3
	87-02-26	185-260E	Hazel Run Twp.	Twp. 91
	87-02-27	185-261L	Hazel Run Twp.	Twp. 15
	87-02-28	185-262T	Hazel Run Twp.	Twp. 156
	87-02-29	185-263A	County of Yellow Medicine	CSAH 17
	87-02-30	185-264G	County of Yellow Medicine	C.R. 3C
	87-02-32	185-266V	Hazel Run Twp.	Twp. 82
	87-02-33	185-267C	Friendship Twp.	Twp. 172
	87-02-35	185-269R	Friendship Twp.	Twp. 72
	87-02-36	185-270K	Friendship Twp.	Twp. 179
	87-02-37	187-271S	City of Clarkfield	8th St.
	87-02-38	185-272Y	County of Yellow Medicine	CSAH 24
	87-02-41	185-275U	Friendship Twp.	Twp. 70
	87-02-42	185-276B	Friendship Twp.	Twp. 181
	87-02-43	185-277H	Friendship Twp.	Twp. 69
Lac Qui Parle	37-02-01	186-466H	Ten Mile Lake Twp.	Twp. 158
	37-02-03	186-468W	Ten Mile Lake Twp.	Twp. 155
	37-02-04	186-470X	Ten Mile Lake Twp.	Twp. 163
	37-02-05	185-278P	County of Lac Qui Parle	CSAH 2
	37-02-07	185-280R	County of Lac Qui Parle	CSAH 206

OFFICIAL NOTICES

<u>County</u>	<u>State Crossing No.</u>	<u>Federal Crossing No.</u>	<u>Road Authority</u>	<u>State Road Designation</u>
	37-02-08	185-281X	County of Lac Qui Parle	CSAH 29
	37-02-09	186-475G	Ten Mile Lake Twp.	Twp. 153
	37-02-10	186-477V	Ten Mile Lake Twp.	Twp. 170
	37-02-11	186-479J	Ten Mile Lake Twp.	Twp. 148
	37-02-12	186-480D	County of Lac Qui Parle	C.R. 71
	37-02-13	186-482S	County of Lac Qui Parle	CSAH 8
	37-02-14	186-484F	County of Lac Qui Parle	CSAH 27
	37-02-15	186-485M	Riverside Twp.	Twp. 138
	37-02-16	186-486U	Riverside Twp.	Twp. 174
	37-02-17	186-489P	Riverside Twp.	Twp. 138
	37-02-18	185-282E	City of Dawson	E. Corp. Limits
	37-02-19	185-283L	City of Dawson	5th St.
	37-02-20	185-284T	County of Lac Qui Parle	CSAH 23
	37-02-22	186-502B	Riverside Twp.	Twp. 46
	37-02-24	186-500M	County of Lac Qui Parle	CSAH 16
	37-02-25	186-498N	Hamlin Twp.	Twp. 115
	37-02-26	186-496A	Madison Twp.	Twp. 185
	37-02-27	186-495T	Madison Twp.	Twp. 83
	37-02-28	186-494L	Madison Twp.	Twp. 189
	37-02-29	185-286G	City of Madison	1st St.
	37-02-30	185-287N	County of Lac Qui Parle	CSAH 204

Notice of Appearance

Date of Hearing: June 11, 1981

Name and Telephone Number of Hearing Examiner: Richard Delong
1745 University Avenue
Saint Paul, Minn. 55104
296-8117

TO THE HEARING EXAMINER:

You are advised that the party named below will appear to the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

Signature of Party or Attorney: _____

Date: _____

Department of Transportation Technical Services Division

Appointment and Scheduled Meeting of a State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State Aid Standards Variance Committee who will conduct a meeting on Thursday, May 21, 1981, at 10:00 a.m. in Room 419, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minnesota Statute § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State Aid roadway standards as governed by 14 MCAR § 1.5032 M.4.b., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of the City of Anoka for a variance from Standards for Street Width on 2nd Avenue from Jackson Street to Harrison Street.
2. Petition of the City of St. Cloud for a variance from Standards for Street Width on 3rd Street North from 31st Avenue North to West City Limits and 33rd Avenue North northerly of 3rd Street North.
3. Petition of the City of Minneapolis for a variance from Standards for Street Width along West Grant Street between LaSalle Avenue and Nicollet Avenue.
4. Petition of the City of St. Paul for a variance from Standards for Street Width on White Bear Avenue between C.N.W.R.R. and Larpenteur Avenue.
5. Petition of the City of St. Paul for a variance from Standards for Street Width on Johnson Parkway between East 7th Street and Prosperity Avenue.

The cities listed above are requested to follow the following time schedule when appearing before the Variance Committee:

10:00 a.m.	Anoka
10:30 a.m.	St. Cloud
11:00 a.m.	Minneapolis
11:30 a.m.	St. Paul

Dated this 4th day of May, 1981

Richard P. Braun
Commissioner of Transportation

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OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
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Perspectives—Publication about the Senate. Contact Senate Information Office.

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This Week—weekly interim bulletin of the House. Contact House Information Office.

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